

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Psara Energy, LTD,	.	Docket #CV-16-4840 (WB)
	.	
Plaintiff,	.	
	.	United States Courthouse
vs.	.	Philadelphia, PA
	.	September 16, 2016
Space Shipping, LTD, et al.,	.	10:55 a.m.
	.	
Defendants.	.	

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TRANSCRIPT OF SUPPLEMENTAL ADMIRALTY RULE E(4) (f)
BEFORE THE HONORABLE WENDY BEETLESTONE
UNITED STATES DISTRICT COURT JUDGE

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Proceedings recorded by electronic sound recording, transcript
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1 THE CLERK: All rise. The court is now in session,
2 the Honorable Wendy Beetlestone presiding.

3 THE COURT: Good morning.

4 ALL: Good morning, Your Honor.

5 THE COURT: Have a seat. Can we make the
6 introductions here, on this side first.

7 MS. REEVES: Mary Elisa Reeves and my colleague,
8 George Tadros for Reeves McEwing, representing the Plaintiff.
9 And I'd like to introduce George Gaitas from the Chalos firm
10 in Houston who will be arguing --

11 THE COURT: Okay.

12 MS. REEVES: -- if it pleases the Court.

13 MR. GAITAS: And may I introduce, Your Honor, Ms.
14 Depoina Bacha, in-house counsel for Brave Maritime
15 Corporation.

16 THE COURT: Okay. And on this side.

17 MR. WHELAN: Your Honor, Rick Whelan from Palmer
18 Biezup & Henderson, representing the Advantage Defendants as
19 local counsel. I want to introduce to the court from the
20 Watson Farley firm, Neil Quartaro and Zachary Farley.

21 MR. QUARTARO: Good morning, Your Honor.

22 THE COURT: Greetings. Okay, we're here on
23 Defendant's motion and brief to -- a motion to vacate
24 attachments and dismiss. So --

25 MR. QUARTARO: Movants first, Your Honor?

1 THE COURT: Yes.

2 MR. QUARTARO: Thank you. And shall I take the
3 lectern, is that --

4 THE COURT: That works.

5 MR. QUARTARO: Okay, thank you.

6 THE COURT: Could you wait one just -- just one
7 second?

8 MR. QUARTARO: Sure.

9 THE COURT: Go ahead.

10 MR. QUARTARO: Thank you, Your Honor. First, let me
11 thank the Court for both the courtesy of allowing us to appear
12 and granting our pro hac applications. Thank you, Your Honor.
13 And second, of course, the extraordinarily quick hearing that
14 Your Honor has granted to the Advantage Defendants in this
15 case. It's greatly appreciated. The vessel that is under
16 arrest is costing approximately \$25,000 a day to its owner,
17 and so the Court's prompt attention to this request is
18 appreciated, so thank you for that.

19 As Your Honor will probably appreciate from the papers
20 that we filed with the Court, today's hearing, at least a
21 portion of it, is somewhat Groundhog-Day-like for counsel.
22 The issues that are raised, particularly with respect to the
23 Advantage Defendants, and we should at the outset identify the
24 fact that there are two separate groups of Defendants, the
25 Geden parties, and in the caption, Your Honor, that would

1 appear to be Space Shipping and Genel Denizcilik Nakliyatı A S
2 -- and I don't speak Turkish, so I'm sure I butchered that in
3 Turkish, but a/k/a Geden lines, and Mehmet Emin Karamehmet,
4 three named Defendants in this action are on the Geden side.

5 THE COURT: Mehmet is part of the -- Mr. Mehmet is
6 part of the Geden side?

7 MR. QUARTARO: There are two Mehments mentioned, Your
8 Honor.

9 THE COURT: Right.

10 MR. QUARTARO: There is a Mehmet Emin Karamehmet,
11 who is --

12 THE COURT: Yes.

13 MR. QUARTARO: -- who Plaintiff alleges is the
14 ultimate beneficial owner of the Geden side of the fence, and
15 we'll get to that because there are some curve balls in there
16 that are important. And there is a Mehmet Met, who is an
17 employee of the Advantage Defendants. So there is a Mehmet --
18 Karamehmet, who is alleged to be the owner on the Geden side,
19 and then there is a CFO, Mehmet Met, who is also one of the
20 witnesses that was deposed --

21 THE COURT: But who are the Defendants on the Geden
22 side? It's --

23 MR. QUARTARO: Mehmet Emin Karamehmet.

24 THE COURT: Okay.

25 MR. QUARTARO: Space Shipping.

1 THE COURT: Okay.

2 MR. QUARTARO: And Genel Denizcilik Nakliyatı A S,
3 a/k/a Geden Lines.

4 THE COURT: Okay, and Gulsun Karamehmet is on the
5 Advantage side, or --

6 MR. QUARTARO: Yes, Ma'am.

7 THE COURT: Okay.

8 MR. QUARTARO: And then, of course, the rest of the
9 Defendants. And just to -- for clarity I'll list them out:
10 Advantage Avenue Shipping, Advantage Tankers, Advantage
11 Holdings, Forward Holdings, and the owner -- 85% owner of
12 Forward Holdings, Gulsun Nazli Karamehmet Williams. So that's
13 the division in the Defendants. And just for clarity -- and
14 we've referred to them in our papers. And if Your Honor is
15 comfortable with it, I'll just use the defined term the
16 Advantage Defendants, and that encompasses our clients and who
17 we represent here --

18 THE COURT: Okay.

19 MR. QUARTARO: -- here today. And I'll also just
20 apologize, I have a small tooth issue which is giving me dry
21 mouth, so I may be sipping water a little more frequently than
22 I usually would. Okay, so the Groundhog Day nature of this
23 case is sort of our first argument in the papers, Your Honor.
24 And just as we get to that, I think it's important to note,
25 and it's in Plaintiff's complaint, there is a underlying

1 arbitration apparently going in England between this Plaintiff
2 and Space Shipping. There may be some of the other Geden
3 parties involved. Many of the facts that are listed in
4 Plaintiff's suggested material facts, findings of material
5 fact, would seem to pertain to that arbitration.

6 THE COURT: Well, so the arbitration is, with
7 respect to the MITCV Stealth, and it's really about the
8 charter issue rather than the security issue, correct?

9 MR. QUARTARO: That's my understanding, yes.

10 THE COURT: Okay.

11 MR. QUARTARO: Yes, the Advantage Defendants are not
12 a party to that arbitration. So the Plaintiff Psara Energy --
13 and I'll just go through our three primary arguments, I think,
14 is probably the best way to do it -- sued the Advantage
15 Defendants with one minor difference, and to appreciate that
16 difference, we should probably, if Your Honor has it handy,
17 turn to, I believe, Exhibit-5 of Plaintiff's verified
18 complaint. I have one handy if Your Honor is --

19 THE COURT: I have it.

20 MR. QUARTARO: And that should be an organization
21 chart.

22 THE COURT: Yes.

23 MR. QUARTARO: Now you can see, and Your Honor is
24 doubtless familiar with this, if not from previous shipping
25 cases, from real estate cases, vessels are very often owned in

1 an ownership structure similar to real estate in that there
2 are a number of holding companies and then special purpose
3 companies that hang under each one of which will own an asset.
4 And that's exactly how this entity is organized. And you can
5 see at the bottom there is a list of, I believe, 11 of these
6 special purpose companies. Each one of them is a vessel
7 owner. All Plaintiff has done here that is different from its
8 action in Texas is put a different SPV in as a Defendant. And
9 I think that's a very important factor as we go forward.

10 THE COURT: So in Philadelphia it's the Advantage
11 Avenue, and in Texas it's the Advantage Arrow.

12 MR. QUARTARO: That's correct.

13 THE COURT: Okay.

14 MR. QUARTARO: So they sued down in Texas, they
15 grabbed one of the Advantage ships. We moved to vacate
16 Plaintiffs, including Psara Energy, resisted that partially on
17 the grounds that they claimed discovery would allow them to
18 prove their claims. We went forward. We had discovery, Your
19 Honor. We provided three witnesses who were deposed over the
20 course of a number of days in London, England. We produced
21 5,000 odd pages of documents, including third party court --
22 or third party banking records and things of that nature.
23 Plaintiff served a third party subpoena on CIT, the arm of the
24 bank. We deposed Ms. Bacha, who is here today, and we went
25 forward and had a evidentiary hearing over a course of a

1 number of hours before Magistrate Judge Stacy in the Southern
2 District of Texas. We subsequently provided some additional
3 briefing at the Court's request. Magistrate Judge Stacy was
4 obviously fully seized of the case and issued the report and
5 recommendation which Your Honor will see annexed to our
6 statement of proposed material facts, I believe, at Exhibit-6.
7 The -- and we refer to that in our papers as the report, and
8 if Your Honor is comfortable with that, I'll just use that
9 shorthand for the report. A reading of the report, Your
10 Honor, is devastating to Plaintiff's case. It reveals that
11 Magistrate Judge Stacy has determined, after this hearing,
12 after these depositions, after a full consideration of the
13 evidence and the arguments and multiple rounds of briefing,
14 that Plaintiff has no case, no substantive claim against the
15 Advantage Defendants.

16 THE COURT: And by Plaintiff you mean Psara Energy?

17 MR. QUARTARO: Yes, there was actually three --
18 there were three Plaintiffs that filed in Texas, Psara, Tank
19 Punk, and I forget the name of the other one. It's listed in
20 our papers and they're defined as the Texas Plaintiffs.
21 Eclipse Liquidity, Your Honor.

22 THE COURT: So in the Magistrate Judge's report and
23 recommendation, I understand that the -- prior to her -- him
24 or her?

25 MR. QUARTARO: Her.

1 THE COURT: -- her writing the report and
2 recommendation, the claims by Eclipse and Psara had been
3 resolved.

4 MR. QUARTARO: No, I would say that the -- that
5 security had been provided up to a certain level in those two
6 cases. But as you can see from the docket, which we've
7 annexed to our statement of facts as Exhibit-1, you can see
8 that all three of these parties, Eclipse, Psara, and Tank
9 Punk, are named as Plaintiffs. None of them are off of the
10 docket. And if you take a look through the docket, you can
11 see that there is no -- you know, no motion to dismiss, no
12 notice of withdrawal, nothing along those lines, Your Honor.

13 THE COURT: Well, help me find this -- where is this
14 --

15 MR. QUARTARO: I'm sorry, Your Honor --

16 THE COURT: Where are they?

17 MR. QUARTARO: -- this is Exhibit-1 to --

18 THE COURT: Exhibit-1, okay.

19 MR. QUARTARO: -- the Advantage Defendants'
20 statement of proposed material fact.

21 THE COURT: Okay, let me see.

22 MR. QUARTARO: I have an additional copy available
23 should the Court require it.

24 THE COURT: It was filed -- I got it.

25 MR. QUARTARO: To make it print I had to put it into

1 landscape format, so that might help, but it should be labeled
2 as Exhibit-1.

3 THE COURT: Yes. Well, the -- I'm looking at the
4 recommendation, and she refers in discussing the matter to
5 Plaintiff Tank Punk, and I thought I had seen something in
6 which her assumption, whether correct or incorrect, was the
7 matter had been resolved with respect to the other two
8 Plaintiffs.

9 MR. QUARTARO: The security that those two
10 Plaintiffs sought was provided in that case.

11 THE COURT: Okay.

12 MR. QUARTARO: However, the request for discovery --
13 and maybe it's just cleanest to walk through that procedurally
14 right now. The response to our motion to vacate was by Psara,
15 and we've included that reference in our papers, and you can
16 see it right on the docket itself. The discovery that was
17 taken, and if you look at our statement of facts, Exhibit --

18 THE COURT: I'm interested mostly in what happened,
19 you know, after the report and recommendation was issued, so
20 the --

21 MR. QUARTARO: That may be --

22 THE COURT: -- your representation is that on the
23 docket the objections were filed by Psara, even though --

24 MR. QUARTARO: That's --

25 THE COURT: Okay.

1 MR. QUARTARO: That may be the quickest way, just
2 can we get to the bottom and we see they're still in the case.

3 THE COURT: That's what I like to do, get to the
4 quickest way.

5 MR. QUARTARO: So let's just quickly pop there. I
6 believe that's the very last page of Exhibit-1, and it's
7 Docket entry 7, Your Honor. Or, I'm sorry, 70 and 71.

8 THE COURT: Okay, go ahead.

9 Mr. QUARTARO: So you can see Docket Entry 70, and
10 this is as recently as July 20th, 2016. Docket Entry 70, and
11 I'll just read it into the record here. Objections to link
12 #64, memorandum and recommendations filed by Eclipse
13 Liquidity, Inc., Psara Energy Limited, Tank Punk, Inc. The
14 next docket entry is 71. It reads almost exactly the same and
15 it's a response to Docket Entry 69, which is the Advantage
16 Defendants objections to the memorandum and recommendations.

17 THE COURT: Okay.

18 MR. QUARTARO: And so you can see as clearly as July
19 20, the second to last and the one before that, docket entries
20 in Texas, Psara Energy is still appearing in filing papers.
21 Objections, in fact, to the report and recommendation that's
22 before Your Honor.

23 THE COURT: Okay.

24 MR. QUARTARO: There was a bit of a procedural
25 morass here, which Psara and Tank Punk caused by trying to

1 file -- I forget what they called it. It's referred to in the
2 report and recommendation, a corrected complaint or something.
3 The Court ultimately directed them to enter a proposed amended
4 complaint because there were certain relation back issues that
5 were present in that argument. So there was a little bit of a
6 procedural jumble there. But I think the salient point, and I
7 think Your Honor is absolutely right to focus on it, is that
8 the last things that were filed in Texas by the Plaintiffs in
9 that action were explicitly filed by Psara. So they can't
10 really say that they're somehow out of the Texas action.

11 THE COURT: Well, I'm just -- I mean, I'm listening
12 to what you're saying, but I'm also reading the holding in the
13 report and recommendation with respect to the dominion and
14 control prong, and it says Tank Punk's evidence of control,
15 which is predicated primarily on the familial relationship
16 between Karamehmet and Williams, and secondarily on the
17 charter business with Shel Westin the Advantage Defendants
18 retain following their purchase of the 11 tankers is simply
19 insufficient under a preponderance of the evidence standard to
20 meet the dominion and control prong of the alter ego test. So
21 her -- regardless of the procedural niceties of the situation,
22 the Magistrate Judge believed that she was writing solely with
23 respect to Tank Punk when analyzing the dominion and control
24 prong. At least that's what it appears to me in reading the
25 opinion.

1 MR. QUARTARO: I understand. However, I think it
2 should be noticed and understood that Psara, Tank Punk and
3 Eclipse are all special purpose vehicles hanging under --
4 they're all part of the same group with the same claims --

5 THE COURT: I understand that you say that, I got
6 it, yes.

7 MR. QUARTARO: -- and all of the discovery in that
8 case, and just to get to the last piece of evidence on that,
9 which is our Exhibit-5, all of the discovery in that case was
10 explicitly taken by, among the other Texas Plaintiffs, Psara.
11 So when you go, for example, to the first page of Exhibit-5,
12 which is the deposition record from Mr. Telgus, who is one of
13 the three witnesses that they deposed, you could see that the
14 case caption includes Psara Energy, and you can see that Mr.
15 Gaitas, who is present here today, introduces himself by
16 saying I am George Gaitas, the attorney for the Plaintiffs in
17 this case. So they -- and if we look at Exhibit-4, which are
18 the notices of deposition and subpoenas that were served, you
19 can see that all -- that the three subpoenas and the three
20 notices of deposition all are served under the caption
21 including Psara, and all reference Plaintiffs Psara Energy and
22 Tank Punk, to take those depositions. So Psara took that
23 discovery. Psara participated in that. Psara remains on the
24 docket in Texas.

25 THE COURT: Okay, move on.

1 MR. QUARTARO: Okay, so thank you. Thank you, Your
2 Honor. Okay, so our -- and that's kind of the Groundhog Day
3 nature of this whole case for us. And it might actually be
4 helpful just as we do this, for me to very quickly -- and your
5 clerk was kind enough to bring an easel. And if Your Honor
6 will indulge me -- thank you. I think -- and I'll try and --
7 I've never been accused of having an indoor voice. I'll try
8 and make sure that I'm recorded here. But from what we can
9 see, what we have here really is our Plaintiff who's alleging
10 a charter contract with Space -- sorry about that -- and is
11 alleging that Space is owned by Geden Holdings.

12 THE COURT: Don't they allege that -- well, okay.

13 MR. QUARTARO: I believe it's paragraph 27 of the
14 verified complaint, Your Honor --

15 THE COURT: Okay.

16 MR. QUARTARO: -- that makes that allegation.

17 THE COURT: Okay.

18 MR. QUARTARO: And then we've got -- I'll just put M
19 and K, if that's okay. And then we get over to the Advantage
20 side here and we've got Nazli Williams and then Forward and
21 then the next one is Advantage Holdings, the next one is
22 tankers. I can see, Your Honor, I would not have succeeded as
23 a school teacher. And then under this is Avenue, right,
24 Advantage Avenue. And under this is the oil tanker that we
25 have restrained.

1 THE COURT: Okay. I mean, I've read the Magistrate
2 Judge's report and also the complaint, so I'm not sure where I
3 got this particular piece of information. It might be
4 relevant moving on, but as I understand it, the -- Space --
5 there's a distinction between Geden Holdings and Genel D.
6 Nakliiyati.

7 MR. QUARTARO: Absolutely.

8 THE COURT: And the Geden Holdings is the owner, but
9 Nakliiyati is the manager, and the relationship with the --
10 with Forward and -- and that Forward and Advantage Arrow have
11 relationship -- management relationships with Genel.

12 MR. QUARTARO: That's correct, yes.

13 THE COURT: Okay, so it's not quite as simplified as
14 you have on the left.

15 MR. QUARTARO: There is a management company --

16 THE COURT: Yes.

17 MR. QUARTARO: -- that's involved --

18 THE COURT: Yes.

19 MR. QUARTARO: -- that's true, but it is not alleged
20 anywhere in these papers to have an ownership interest.

21 THE COURT: Okay.

22 MR. QUARTARO: That's critical.

23 THE COURT: Okay.

24 MR. QUARTARO: Also, and this -- you know, this is
25 kind of the problem with the case, is that to the extent there

1 is anything new that's being argued here, the only thing
2 that's new is the substitution of Advantage Avenue instead of
3 one of the other SPVs. So this relationship, at least up to
4 here, is what's been litigated in Texas. They've just swapped
5 in a different SPV that owns a different ship here in
6 Philadelphia, Your Honor. That's the only structural
7 difference in this case, and I think that's absolutely
8 critical for looking at the collateral estoppel issue.

9 THE COURT: Well, there's -- so this case is only
10 Psara, not Eclipse and not Tank Punk, so that's --

11 MR. QUARTARO: Well, yes, that's true, but the --
12 it's a consolidated docket. And so Psara filed its own
13 action, Tank Punk filed its own action, Eclipse filed its own
14 action, and the Court consolidated them into it.

15 THE COURT: Ah, okay. So -- okay.

16 MR. QUARTARO: So they're all stand-alone
17 complaints, yes.

18 THE COURT: So, okay, let's just focus on the Psara
19 case, then, and Psara -- I'm just -- and forgive me, this is a
20 complicated case --

21 MR. QUARTARO: I understand.

22 THE COURT: -- and I'm trying to really get to the
23 bottom of it here. So if we look at the Defendants, Space
24 Shipping, both Pennsylvania and Texas, but Advantage Avenue
25 Shipping only in Pennsylvania, that's because you said they

1 changed the ship. Geden Lines --

2 MR. QUARTARO: Geden Lines is present in both, Your
3 Honor.

4 THE COURT: Is both. No --

5 MR. QUARTARO: Yes, Geden lines is present in both.

6 THE COURT: Pennsylvania and Texas.

7 MR. QUARTARO: Yeah.

8 THE COURT: Advantage Tankers, LLC, present in both;
9 Advantage Holding, LLC, present in both; Mehmet Karamehmet in
10 both; Gulsun Karamehmet Williams, both; Aver Navigations, only
11 Texas; Advantage Arrow Shipping, only Texas; Forward Holdings,
12 LLC, both; Spike Shipping, only Texas. Now the ones that are
13 only Texas, does that make a difference to your argument that
14 the parties are the same?

15 MR. QUARTARO: It does not, because each one of
16 those differences that Your Honor has found, if you look at
17 that org chart that is that Exhibit-5, there's simply
18 different SPVs -- and this is Plaintiff's document, too,
19 right. This isn't even us, this is the Plaintiff alleging the
20 corporate structure. But I think they have it largely
21 correct. There are just different ship owning companies
22 hanging under Advantage Tankers.

23 THE COURT: But isn't one of your arguments that the
24 corporate veil can't be pierced, but yet you're telling me
25 that, oh, it's just a different -- it's a different company

1 for each ship. So -- and you're throwing them together into
2 one pot. Is that problematic?

3 MR. QUARTARO: For the purposes of the legal
4 analysis, it is not, and the reason it is not is because these
5 other Defendants that are in Texas are -- you know,
6 organizationally, they sort of hang like this. So all they've
7 done -- remember, this is just a we've-found-an-asset-
8 belonging-to-the-Defendant-and-we've-grabbed-it case. So here
9 they found an -- they found the Avenue. In Texas they found
10 the Arrow. In Louisiana they got a different ship.

11 THE COURT: So you're telling me for -- at least
12 from your perspectives, it doesn't matter whether it is
13 Advantage Avenue, Advantage Arrow, Advantage whatever, it's
14 the same thing?

15 MR. QUARTARO: Right.

16 THE COURT: And how do I --

17 MR. QUARTARO: Yes.

18 THE COURT: -- how do I know that for the -- apart
19 from you telling me, and you're an officer of the Court, I
20 assume you're telling me the truth --

21 MR. QUARTARO: Of course.

22 THE COURT: -- but I think I need more than that.

23 MR. QUARTARO: Of course, Your Honor. I would say
24 that it doesn't matter, because if they -- what they would
25 need to prove up here is this chain of all three ego

1 relations, right? So their in privity was faced, so they've
2 got a -- and we'll -- there was another lurking problem that
3 we'll get to at the end. But they've got to pierce the veil
4 from Space up to its owner, right. That would be the first
5 thing. So that's old things. They've got to pierce the veil
6 up to its owner. Then they've got to get across to Ms.
7 Williams. Then they've got to get down to Forward, down to
8 Advantage Holdings, and down to Advantage Tankers. By
9 substituting a different SPV, our view, they don't get to
10 relitigate this entire chain. Now granted, granted, Your
11 Honor, if they had gotten to the point where they had found
12 liability, up to the -- or they had found an alter ego chain
13 and been able to prove that, up to the Advantage Tankers
14 level, then all they would need to do is show the same 3rd
15 Circuit veil piercing factors that they would presumably have
16 been able to show, and they could have gotten any of these
17 SPVs. But there is no allegation like that in the complaint,
18 Your Honor. There is no allegation that says, oh, we have new
19 facts that show that the Advantage Avenue was somehow treated
20 differently than any of the other SPVs in Texas. And that's a
21 critical collateral estoppel problem for them, because this
22 chain of relationships has been fully litigated. We've got
23 discovery, we've got depositions, we've got a reasoned report
24 and recommendation from the Magistrate.

25 THE COURT: Well, let's talk about that. You

1 premised your last couple of sentences with 3rd Circuit veil
2 piercing law. But I'm looking at the report and
3 recommendation, and obviously they're in Texas, so I see a lot
4 of 5th Circuit, and some other cites to other cases -- other
5 circuits, presumably, because the 5th Circuit didn't have
6 specific cases on that point. But wouldn't the substantive
7 law be different in that I would be dealing with the 3rd
8 Circuit law and the Magistrate Judge was dealing with the 5th
9 Circuit law?

10 MR. QUARTARO: I think there is two answers to that
11 question, but the first answer is yes, absolutely. This is
12 the 3rd Circuit; we have different law than we have in the
13 5th.

14 THE COURT: So all things being considered, why
15 would I -- why would the Magistrate's report and
16 recommendation on that particular point, why would I -- why
17 would it collaterally estop -- be collaterally estopped -- why
18 could it be used as collateral estoppel in this case? Only on
19 that substantive law issue.

20 MR. QUARTARO: Well, because that issue has been
21 fully and fairly litigated in Texas, Your Honor. Put it --
22 you know, to look at it another way, how can one bring a case
23 for breach of contract in Texas, get a report and
24 recommendation like this, throwing that -- basically throwing
25 it out, and then look at New York and go, actually, there is a

1 slightly different contract law in New York. We'll sue them
2 in New York; we get to re-litigate the whole thing. That
3 doesn't make sense. How many times did they get to run that
4 argument? Do they get to move from the 5th Circuit to the
5 3rd, to the 2nd, to the 1st until --

6 THE COURT: Well, let's say they had won that
7 argument, and let's say -- what was the ship there? The --

8 MR. QUARTARO: There were --

9 THE COURT: The Arrow.

10 MR. QUARTARO: Yes, there were a couple of them, but
11 the Arrow is one.

12 THE COURT: You know, let's say the Magistrate Judge
13 had said, yes, with respect to the Arrow, impounding is
14 proper, and they were to go with respect to all of the other
15 ships, all of those LLCs down at the bottom, and they were to
16 go to every single court across the Country, wherever they
17 could find a ship, and say to the Judge, well, you know, the
18 Magistrate Judge said that, so therefore we don't even have to
19 litigate it. Would you be okay with that?

20 MR. QUARTARO: I would say that would be a daunting
21 case of offensive collateral estoppel. That would be a
22 difficult argument to overcome.

23 THE COURT: But it's different for you?

24 MR. QUARTARO: No, that's exactly the same. It's
25 collateral estoppel on the defensive side because they've

1 brought the action here. It's a mirror image of the same
2 thing. I would have a problem with that. If that had
3 occurred, how could I appear before Your Honor and say, well,
4 even though they proved that Emin Karamehmet and Geden
5 Holdings were alter egos in Texas, that's not binding on me
6 here in the 3rd Circuit. I would be laughed out of the
7 courtroom. I mean, of course it's binding on us. It's been
8 fully and fairly litigated, the issue has been advanced,
9 discovery has been had, a decision has been issued. How could
10 I possibly use defensive collateral estoppel in that instance?
11 I would really be on the other side and it would be Plaintiffs
12 using that offensively. But if the issue is fully and fairly
13 litigated before a court, you can't just go to another court
14 because you think the law might be a little bit different
15 there, and retry the case. I mean, how many sort of kicks at
16 the can does one get? I would suggest that it's one, Your
17 Honor.

18 THE COURT: Okay, continue.

19 MR. QUARTARO: Okay, thank you. Thank you, Your
20 Honor. So just walking through the collateral estoppel issue,
21 I think there is really only two issues. 1) Can a different -
22 - you know, can different SPVs owned by Plaintiff bring a
23 series of cases against the different SPVs owned by the
24 Advantage Defendants, or not? And I think the answer to that
25 is no, because otherwise they get to bring 11 lawsuits. Every

1 time they get one of these ships somewhere, they get to start
2 the whole thing over again because they've moved one different
3 party head. As Your Honor is doubtless aware with collateral
4 estoppel, the issue is not necessarily uniformity of the
5 parties, it is privity. And in this case both companies are
6 organized roughly the same way. They've got a series of these
7 ship owning companies hanging under a holding company, a hold
8 co, and of course they've got three or four of them that are
9 in privity with different Geden Holdings companies. And so
10 this would also set up a problem where they could just go from
11 SPV to SPV, having the same lawsuit over and over and over
12 again, simply by subbing in a different Advantage SPV. That
13 can't work either. They're in privity, they're part of the
14 same corporate group. They shouldn't get to litigate this
15 infinitely. And in any event, even if they're making that
16 argument, these relationships, at least again up to Advantage
17 Tankers, are all the subject of the action in Texas. So as
18 findings of fact and findings of law go, we -- you know, we
19 have the report, it's under consideration, of course, by the
20 District Court, and you can see from that report that these
21 relationships have been fully explored. It's not like the
22 Judge somehow didn't look at them. She looked at them in
23 great detail.

24 THE COURT: So let's talk about the fact that it's
25 awaiting a decision by a District Court. So you -- the

1 objections were filed, responses were filed, replies were
2 filed, so it was ripe on August the 11th, 2016.

3 MR. QUARTARO: That's correct.

4 THE COURT: And I don't know what the docket is like
5 in Texas, I don't, like, know whether they do it immediately
6 or wait for six months, I have no idea. But certainly there's
7 de novo review. And given that, what does that do to your
8 collateral estoppel argument?

9 MR. QUARTARO: I think the issue that Your Honor is
10 touching on in -- with respect to collateral estoppel is found
11 in the restatement second and that's the requirement 30
12 finality. I think that's probably -- would you agree?

13 THE COURT: I would -- that's -- to put a fine point
14 on it, yes.

15 MR. QUARTARO: Yes, okay. Well, I used that word
16 specifically because, of course, I familiarized myself with
17 the status of -- with the requirement that a judgment be final
18 here in the 3rd Circuit. And what we've learned, and we have
19 this on page 7 of our brief, is that -- and we could quickly
20 read it into the record because it may be helpful, and we've
21 quoted In RE: Brown, a 3rd Circuit case from 1991, and that's
22 951 F2d 564 at page 569. In the collateral estoppel --
23 finality in the collateral estoppel context is a more pliant
24 concept than it would be in other concepts -- other contexts,
25 I'm sorry, and finality may mean little more than the

1 litigation of a particular issue has reached such a stage that
2 a court sees really no good reason for permitting it to be
3 litigated again. I would suggest that that is precisely where
4 we are. We have a report and recommendation that is pending.
5 It has resolved all of these alter ego allegations that have
6 been made by Plaintiff. It is awaiting a review by the
7 District Court. It's been fully submitted; well, the
8 responses and all of that are in and before the Court. And I
9 would suggest that in the interim, between the issuance of
10 that Magistrate report and recommendation and the District
11 Court's decision, we have sufficient finality at least to, you
12 know, to say that it's not fair during that window to run out
13 on the very same theory that the Magistrate Judge has fully
14 tried and rejected, and go grab additional assets, in this
15 case \$3.5 million, probably a \$4 million bond is what's being
16 requested.

17 THE COURT: Well, I mean, you're beating the
18 fairness drum. But, you know, certainly if someone were to
19 get up in this District and say to me, while a Social Security
20 appeal, report and recommendation, or a habeas recommendation
21 by a Magistrate Judge should be -- is to all intents and
22 purposes final, I know that most of the judges in this
23 courthouse would be a little bit upset, because we routinely
24 review habeas R&Rs, and social security R&Rs, and pretty much
25 any R&R, and I think it's our job to do that. So, you know, I

1 understand that you're hanging your hat on the fairness, but
2 it's also not fair to them if I use what is, in essence, a
3 report and recommendation, not a decision, not an opinion, to
4 grant you a victory in this case.

5 MR. QUARTARO: I understand. And before Your Honor
6 continues, I would just be very, very clear: I am not
7 suggesting in any way, shape or form that a R&R, or the report
8 in this case is equivalent to a judgment in all contexts.
9 What I am suggesting is that 3rd Circuit precedent says that
10 in the collateral estoppel context, the concept of finality is
11 a little bit more amorphous than that, for example, that you
12 might see in -- you know, in other contexts. I certainly --
13 that is -- a report and recommendation is not the equivalent
14 of a judgment. We'll be absolutely clear about that, and I
15 expect that the District Court is undergoing the review of the
16 underlying papers, the R&R, and the other documents that it
17 would undertake in the normal course. What I am suggesting is
18 that for collateral estoppel purposes, that In RE: Brown, and
19 there is an accompanying 3rd Circuit case that it cites,
20 Dyndul v. Dyndul, says that it's a little bit more pliant than
21 what we would have in other contexts. And I would argue to
22 the Court that in this case -- excuse me -- the Magistrate
23 having heard everything, the -- you know, having had the
24 testimony and everything before her, the documents, counsel
25 arguing, and having issued not a 1½-page, you know, short

1 decision, a 25-page lengthy, reasoned decision that for the
2 purposes of this suit under 3rd Circuit precedent, we have a
3 sufficiently final judgment that Plaintiff ought to be
4 collaterally estopped from bringing the very same alter ego
5 claims that it has litigated in Texas. And on top of that, I
6 would have to say that that report, it's not -- it doesn't
7 present Plaintiff's claims as a close call. It's rather
8 clear, there's no substantive claim against the Advantage
9 Defendants. That's one of the Court's conclusions. So this
10 isn't sort of a halfway analysis. She went the full distance
11 and issued a, you know, fairly lengthy report examining really
12 all of the same allegations that are before Your Honor with
13 respect to the alter ego allegations.

14 THE COURT: Now, In RE: Brown, was it -- or is it
15 Dyndul v. Dyndul, are either of those cases in the context of
16 an R&R?

17 MR. QUARTARO: I don't believe so, no.

18 THE COURT: Okay. Have you found any cases in the
19 context of an R&R anywhere in the country with respect to this
20 issue?

21 MR. QUARTARO: I don't think I could represent to
22 the Court that we did a national search on it, and having put
23 this together in sort of 48 hours, I don't frankly recall what
24 I saw in that context.

25 THE COURT: Presumably you looked to the Eastern

1 District of Pennsylvania.

2 MR. QUARTARO: Well, of course, Your Honor, and 3rd
3 Circuit.

4 THE COURT: Anything in the Eastern District of
5 Pennsylvania?

6 MR. QUARTARO: Not that I recall, Your Honor.

7 THE COURT: Middle District? Western District?

8 MR. QUARTARO: Not that I recall, Your Honor.

9 THE COURT: New Jersey, Delaware?

10 MR. QUARTARO: I believe the -- I believe Dyndul v.
11 Dyndul may have been a New Jersey case, but I don't -- I just
12 don't recall what the underlying piece was there. I'm sorry,
13 Your Honor.

14 THE COURT: Okay. Move on.

15 MR. QUARTARO: So that we think is -- frankly, we
16 think that's a pretty major problem with Plaintiff's
17 complaint. We're also, you know, seized of a number of other
18 arguments. One of them -- I'll return to this in a moment.
19 Did Your Honor have any further questions on the collateral
20 estoppel, or --

21 THE COURT: Not the collateral estoppel argument,
22 no.

23 MR. QUARTARO: Okay. So I think it probably makes
24 sense then, we'll move on to the next piece. Just as I do
25 that, though, I do want to flag that should Plaintiff's

1 proposed findings of fact be adopted, it actually sets up a
2 fascinating collateral estoppel down in Texas, because of
3 course they could take Your Honor's order, trot down to Judge
4 Werlein, and say, well, to the extent you're debating whether
5 or not to adopt the factual findings of the Magistrate, on a
6 couple of instances it's too late, because the Eastern
7 District of Pennsylvania has given us an actual order, and so
8 Your Honor is now precluded. They could use that as offensive
9 collateral estoppel. You know, it would depend on which
10 factual allegation, as you saw from their statement of
11 proposed material facts, some of them go to the arbitration,
12 some of them would be relevant in Texas, some of them are
13 probably only relevant in the case before Your Honor. But the
14 commonality of facts means that that issue -- that order could
15 have -- should Your Honor order it, could have a preclusive
16 effect down in Texas. I think that's especially problematic
17 where here we have a rule E hearing, there we've had an
18 evidentiary hearing with discovery, argument, briefing, and
19 all of that. So I -- to finish on the collateral estoppel
20 issue, it sets up an interesting collateral estoppel issue
21 should their relief be granted. I would make the same
22 observation about the statements of fact that they proposed to
23 Your Honor with respect to the arbitration in England.
24 Although we're not a party to it, it would seem that would
25 have the same effect. They could then go to England and say,

1 oh, litigated this issue, so they don't get to bring it up
2 now. I'm not sure procedurally really how that would work.
3 I've never been confronted with that one before.

4 Moving on to the allegations of their complaint, we've
5 got another reason why Your Honor can vacate this attachment.
6 The first -- you know, the first thing that I would observe to
7 Your Honor is that this is a very unusual series of
8 allegations. We're not faced with the normal case where we
9 have a owner of a company who has blurred the lines between
10 their personal finances and the company and were attempting to
11 treat that owner and the company as alter egos of each other.
12 It would just be a much more common sort of allegation. We're
13 off in whatever we want to call this extended chain of alleged
14 alter egos. And so it is an unusual and unorthodox theory, I
15 would say one that there is very, very little precedent on.
16 And with respect to the 3rd Circuit, that raises some
17 problems. I think, you know, the first problem is that we
18 have these factors that the 3rd -- for piercing the corporate
19 veil, bearing in mind that under general Maritime law, we have
20 some authority that really reserves veil piercing for an
21 extraordinary circumstance. And I'm not clear that an
22 extraordinary circumstance has been alleged here. But the
23 other standard that the 3rd Circuit has enunciated, and we
24 have this from the Pearson case, which I think is a good
25 guide, is that in a corporate veil piercing case, this burden

1 is very difficult for a Plaintiff to meet, and for obvious
2 reasons.

3 THE COURT: But the burden is different than in
4 Texas, right?

5 MR. QUARTARO: The -- I would say that -- I think
6 the burden is the same and we are in the same posture of a
7 rule E hearing. So I think the evidentiary burden that the
8 Plaintiff had to bring in Texas and the evidentiary burden
9 that they would have to bring before Your Honor would have at
10 least initially been the same. I believe in Texas, actually,
11 their burden then was elevated because we had discovery. So
12 at that point we had a hearing that was beyond simply do I
13 have a prima facie case; it was much more akin to a mini-trial
14 on the issue. That -- I think that's very important. Their
15 standard in Texas was higher because we'd had this discovery,
16 they'd had the benefit of that. So it wasn't get the
17 documents, get the testimony, oh, and then we only have to
18 make a prima facie case; it's we've got to meet it, I believe
19 the standard she applied was a preponderance.

20 THE COURT: Well, let's compare apples to apples.
21 If you compare the 3rd Circuit standard to the 5th Circuit
22 standard at this stage of the proceedings and then compare it
23 following discovery at an evidentiary hearing --

24 MR. QUARTARO: Identical.

25 THE COURT: Identical.

1 MR. QUARTARO: Identical.

2 THE COURT: So it's identical after the evidentiary
3 hearing, but different at this stage?

4 MR. QUARTARO: Yes, because we're here at a rule E
5 without any discovery or anything like that. And so I think
6 the standard here is probably, as Your Honor suggested in the
7 order, is prima facie. Should we somehow go forward, there's
8 discovery and all of those things, the standard obviously
9 would be higher because you would have the evidence before
10 Your Honor, you'd be able to determine --

11 THE COURT: But the standard in Texas and the
12 standard in -- or in the 5th Circuit and the standard in the
13 3rd Circuit, you're making that representation it's exactly
14 the same standard?

15 MR. QUARTARO: Yes, Your Honor. I would say that at
16 an initial rule E hearing in both the 5th Circuit and the 3rd
17 Circuit, the Plaintiff's obligation would be to establish a
18 prima facie case showing sort of the order to show cause
19 standard, order to show cause why you have a prima facie case
20 and the attachment should not be vacated. I would say that's
21 sort of what Aqua Stolee and the other cases that are before
22 Your Honor say, and indeed, that's what Your Honor's order
23 said, and I think that's correct. However, if one goes
24 forward and obtains discovery and you litigate that issue,
25 obviously the standard is no longer prima facie, you have to

1 make your case. You've got the evidence, you've explored it,
2 you've moved beyond the initial hearing. And that's where I
3 would say it's exactly the same. If we were both -- you know,
4 if we were here or in the 5th Circuit on the initial rule E,
5 it's a prima facie. If we go forward, there's discovery and
6 things like that, it's got to be higher than prima facie.
7 What's the point of having the discovery?

8 THE COURT: Well, there are some cases cited by
9 Plaintiff on page 3 of its brief suggesting that the Courts
10 are not uniform in what the standard is. It's page 3, it's
11 the last paragraph, or the second -- well, it starts off by
12 saying the burden of proof in Rule E-4F is set out in the
13 text. Plaintiff shall be required to show why the
14 (indiscern.) shall not be vacated or other relief granted
15 consistent with the rules. And then the final paragraph says
16 that the standards are either a reasonable belief standard of
17 proof, and that's a 4th Circuit case, and then a reasonable
18 grounds standard, and that looks like New York and California,
19 and then a probable cause standard which seems to be Florida,
20 Louisiana, and Texas. I don't see anything for the 3rd
21 Circuit. But this suggests that in fact the standard is
22 different in different jurisdictions.

23 MR. QUARTARO: I'm not sure, actually, in the Texas
24 case that that came up, because we didn't get an initial rule
25 E hearing. What we got was an evidentiary hearing after

1 discovery. So there was not the equivalent of the hearing
2 that we have before Your Honor.

3 THE COURT: Right, but my question was, first of
4 all, at this stage, comparing apples and apples, is the
5 standard uniform, and I think you said yes. And then I said
6 at the next stage, which is the evidentiary hearing following
7 discovery, is the standard the same, and you said yes, and I
8 don't think anyone's addressed that in any great detail, that
9 issue. But the Plaintiff's brief does say that in this
10 context the standard does vary and, you know, to tell you the
11 truth, I don't know what the difference is between a
12 reasonable belief standard, a reasonable grounds standard, or
13 a probably cause standard in the context of this kind of
14 litigation. But it does suggest that there is a different --

15 MR. QUARTARO: I understand. I --

16 THE COURT: -- prism through which the Court views
17 the information it's receiving.

18 MR. QUARTARO: I'm sorry, Your Honor?

19 THE COURT: A different prism through which the
20 Court --

21 MR. QUARTARO: Ah, yes, yes. No, I can appreciate
22 that. I think what I would probably say is that, again,
23 bearing in mind that we've got a difference between an initial
24 rule E and a post-discovery evidentiary hearing, whether or
25 not that's conducted personal to a rule E or not, I think

1 these terms are very close, you know, reasonable belief,
2 reasonable grounds. These go -- these tests go to the grounds
3 upon which the Plaintiff has brought the attachment to action.
4 And again, I think in the context of this hearing, I don't
5 think that there is much dispute that that's probably a prima
6 facie standard. I'm not sure that there is another lens that
7 Your Honor would apply at this stage of the proceeding. I
8 think that should it move forward, that may very well become
9 an issue because then the question will be do -- how much of
10 their case do they need to make to Your Honor in order to
11 pierce the corporate veil. And I would say at that point, you
12 know, we're moving into the normal civil preponderance of the
13 evidence type standard.

14 THE COURT: With respect to your corporate veil
15 argument, is that ultimately a jurisdictional argument?

16 MR. QUARTARO: It is a jurisdictional argument,
17 certainly. It's also a substantive argument because without
18 being able to pierce that corporate veil, they can't go after
19 the Advantage Defendants' assets. So it's certainly a
20 procedural issue and a -- which -- a jurisdictional issue.
21 But it's also a substantive issue. If they cannot make that
22 corporate veil showing, that pierce the corporate veil
23 showing, then how can the Advantage Defendants have property
24 restrained in this district personally to their claim against
25 Space, and the answer of course would be that they can't.

1 THE COURT: So your view is I have to decide that
2 issue in order to exercise jurisdiction?

3 MR. QUARTARO: I think that -- that might flip it,
4 actually. I think that if Your Honor -- and frankly, this
5 didn't come up in Texas so I'm reasoning through it now. I
6 think if Your Honor was to vacate the attachment, then it
7 doesn't matter, right. And if -- because the Advantage
8 Defendants are out. If Your Honor was to uphold the
9 attachment, we have certainly reserved the jurisdictional
10 defense. We've made a limited appearance under Federal Rule
11 E8, and I think that's something that we would then want to
12 look at and consider. I'd have to really think about that,
13 Your Honor, because if you had found grounds to pierce the
14 corporate veil, I'm not quite sure how those grounds could be
15 -- would not be relevant to the jurisdictional finding. As
16 I'm thinking about it, I'm thinking they would be.

17 THE COURT: I think it's a complicated issue.

18 MR. QUARTARO: Yes, and so --

19 THE COURT: I don't think it's simple, no.

20 MR. QUARTARO: -- that's -- as we say in the office,
21 that's a legal porcupine. There's no way to wrestle with that
22 comfortably. We'll see if the issue comes up. I don't know
23 if it will. It did not, again, in the Texas --

24 THE COURT: Okay.

25 MR. QUARTARO: -- action, but of course, at the rule

1 E -- the evidentiary hearing, the rule E evidentiary hearing
2 resulted in the R&R, so we never got there.

3 THE COURT: Okay.

4 MR. QUARTARO: So the -- does that square that
5 circle for the Court?

6 THE COURT: That is. Yes.

7 MR. QUARTARO: Okay.

8 THE COURT: You can move on to fraudulent conveyance
9 argument.

10 MR. QUARTARO: Yes, thank you. Thank you. So --
11 and this actually -- Your Honor had asked about the standards,
12 and there is a divergence from standards here as well. I
13 wouldn't say standards; factors in the test. The 5th Circuit
14 has one test for corporate veil piercing. The 3rd Circuit has
15 a different test.

16 THE COURT: You mean fraudulent conveyance. You
17 said corporate veil piercing.

18 MR. QUARTARO: Yes, alter ego veil piercing.

19 THE COURT: Okay.

20 MR. QUARTARO: Yes, I'll cover off the other pieces
21 as well --

22 THE COURT: Okay.

23 MR. QUARTARO: -- because we have those as our next
24 arguments. But the argument here, you know, the analysis
25 under Pearson of whether or not the corporate veil should be

1 pierced, has some slightly different factors than what the 5th
2 Circuit looks at. I would say in both cases there are
3 cautions in the case law that say these are non-exhaustive
4 lists. So I don't want to represent that, you know, this is
5 it, and Your Honor of course is free to look at other facts.
6 I'm not suggesting that's not the case. But these are, on the
7 list that Pearson instructs, are valuable things to look at in
8 determining whether the alter ego obligations ought to be
9 upheld. And when we look at the verified complaint, we can
10 see that these allegations are missing. And what are they?
11 Allegations that the Advantage Defendants, certainly -- I
12 don't know about the Geden Defendants, but the Advantage
13 Defendants are grossly undercapitalized, nothing. No
14 allegations that the Advantage Defendants failed to observe
15 corporate formalities. No allegations that they failed to pay
16 dividends or are insolvent. No allegations that the dominant
17 stockholder has siphoned funds from the alleged alter ego.
18 And that, again, of course, these tests reflect what Your
19 Honor would normally see in terms of alter ego allegations.
20 So it's not surprising that they're not there because it's an
21 unorthodox strategy or an unorthodox theory. The other ones
22 are whether or not the officers and directors serve a
23 function. There is on allegations that they do not, or that
24 the Advantage Defendants failed to keep corporate records.
25 And last, they do not and cannot allege that the Advantage

1 Defendants are a facade for the operations of the dominant
2 stockholder, because the dominant stockholder is different on
3 the Advantage side than on the Geden side. So that's also an
4 allegation they can't quite, you know, get to.

5 So what do we have? "Successor corporation
6 relationship," and I put that in quotes. It's directly from
7 the complaint, and {quote} "fraudulent conveyance allegations"
8 {close quote}. And they have problems here, too. And the
9 first problem that they have is that successor liability in
10 the 3rd Circuit falls under a general rule that when one
11 corporation sells or transfers its assets -- and I think it's
12 also key here to note, Geden Lines had something like 65
13 ships. We're talking about a subset of 11. So we're not
14 talking about all assets, we're talking about one group of a
15 particular type of ship. I think that's a pretty important
16 distinction. This isn't a wholesale asset transfer from one
17 company to another, it's the sale of a portion, you know,
18 whatever that is, one-sixth odd of a fairly large fleet. We
19 got into all of this in discovery, Your Honor. They asked
20 questions of the CFO and the CEO and the owner and how did you
21 dispose of them and what was the -- you know, how was the
22 market price set independently by third party brokers, by the
23 way. How were these vessels sold, the contracts were
24 produced, the banking records showing the payments were
25 produced, the release of the mortgage and how the purchasers,

1 the Advantage purchasers, paid off the mortgages. All of
2 those bank records are in evidence, they were all produced,
3 they were litigated extensively. So that chain of commerce,
4 Your Honor, is -- you know, the Texas court was fully
5 appraised of that. We had charts showing what portion was
6 equity, what portion was debt. You know, it was fully
7 litigated. But under 3rd Circuit law they wind up with a
8 problem because, you know, we've got this general rule that --
9 and this is this Lafountain v. Webb Industries case, and it's
10 in our papers, 951 F2d 546 and 7 is the pinpoint. The
11 successor -- one corporation sells or transfers its assets to
12 a second corporation, the successor does not become liable for
13 the debts and liabilities of its predecessor. Now there is a
14 couple of exceptions. Of course we've got product liability
15 cases, which isn't really what we're looking at here, but
16 that's one of the exceptions. The other is found where
17 business is continued under another name. But the 3rd Circuit
18 has addressed this. And in Polius v. Clark Equipment, Co.,
19 and it cites to a 7th Circuit case, a continuation theory
20 demands a common identify of stock directors and stockholders
21 and the existence of only one corporation at the completion of
22 the transfer. Here a simple examination of the docket reveals
23 that that is not the allegation that's before the Court.
24 We're not talking about a merger. Their own allegations note
25 that there are different stockholders. There's no allegations

1 that we've got a common identity of stock. You know, they
2 don't -- there is obviously multiple companies, of course.
3 They don't meet that standard enunciated for a continuation
4 theory in the 3rd Circuit, and I think that's a problem with
5 that -- with arguing that theory. I would also again point
6 out that this exact chain of relationships is exactly, at
7 least until we get to Advantage Avenue, is exactly what's
8 before the Court in Texas. How are all of these ships sold?
9 What were the terms? How were these companies formed? When?
10 How were they capitalized? This is what the Texas case is
11 about. And what the Plaintiff is really trying to do is,
12 having had this report come out that's adverse to it, is
13 relitigate this. They want to relitigate all of these issues
14 which are exactly the same issues that they litigated down in
15 Texas.

16 THE COURT: Was the Louisiana case filed after the
17 Texas case?

18 MR. QUARTARO: I believe so, yes.

19 THE COURT: When?

20 MR. QUARTARO: I would defer to Plaintiffs on that,
21 but my recollection is that one was filed in February or March
22 of this year.

23 THE COURT: Do you know what's going on in that
24 case?

25 MR. QUARTARO: It's just stayed. And we put that

1 in, by the way, and actually, on the collateral estoppel
2 argument, that's a rather interesting comment that our
3 opponents have made. If you look at Exhibit-7 to our proposed
4 statement of facts, there is a proposed stay in that case, and
5 we cited some of the language in our papers. But our
6 opponents here advised the Court in Louisiana the final ruling
7 on the motion and the reasoning of the Court in the Texas
8 action may be significant to the resolution of issues likely
9 to arise in this action, which we completely agree with. Our
10 view is what happens in Texas is going to have a collateral
11 estoppel effect on this alter ego argument brought by any of
12 the Plaintiffs' SPVs, certainly anywhere in the United States.

13 THE COURT: So maybe I need to ask the Plaintiff
14 this question, but so the action is stayed in Louisiana.

15 MR. QUARTARO: Yes.

16 THE COURT: The ship was impounded initially.

17 MR. QUARTARO: Yes.

18 THE COURT: And then what happened, there was a
19 bond?

20 MR. QUARTARO: Yes.

21 THE COURT: And then the ship was released?

22 MR. QUARTARO: Yes.

23 THE COURT: Okay.

24 MR. QUARTARO: Yes. And of course this is as this
25 discovery is taking place. I'd have to look at the dates; I

1 don't recall if it was before -- I'm reasonably confident it
2 was after the evidentiary hearing but before the supplemental
3 round of briefing. It certainly was before the R&R issue,
4 otherwise we would have been in Louisiana making exactly this
5 argument but in a city that serves Cajun food. So we would
6 have been in a different place but making, I think, very, very
7 similar arguments. And you can see in that Exhibit-7, you
8 know, they go on and they advise the Court that in the Texas
9 action -- this is on page 4 of their unopposed motion for stay
10 in Louisiana, and it's the first full paragraph on the top of
11 that page.

12 THE COURT: Go ahead.

13 MR. QUARTARO: They say the Court is expected to
14 imminently issue a final decision on a pending amended motion
15 to vacate the order of attachment and dismiss the suit. The
16 decision of the Court in the Texas action may have significant
17 bearing on the issues of the suit before this Court as to the
18 ownership of the property attached, i.e. the vessel, and be
19 useful in resolving parallel or identical issues of law and
20 fact. And that's exactly what we have here. It's exactly the
21 same thing. The Texas court, once this R&R is dealt with by
22 the District Court, these issues will be decided one way or
23 the other with the admitted exception of Advantage Avenue, the
24 SPV that they've named here as opposed to Arrow, the one that
25 they named down in Texas. So they're -- you know, in other

1 words, they're telling the Court in Texas, yes, there's
2 commonality of issues and facts. Stay the action -- or
3 Louisiana. Stay the action here in Louisiana. Obviously
4 they're saying something different here. All right. Sorry, I
5 had to move places in my exhibit book.

6 So we've got a problem with the continuation theory that
7 -- or with the alter ego allegations that they don't fit in
8 the box that the 3rd Circuit has set up. So the next
9 question, I would say, do they fit in any other boxes. Well,
10 I think we've covered off the successor liability claim
11 because it doesn't comply with Polius v. Clark, it doesn't
12 comply with the 3rd Circuit precedent on alleging successor
13 liability and what that cause of action demands in terms of
14 alleged final product, if you will, of the alleged alter egos.
15 So I think that's a problem and I don't think that -- to the
16 extent it is a cause of action, I don't think they've
17 enunciated a cognizable cause of action under 3rd Circuit
18 precedent here in Pennsylvania. The other thing that they
19 have is this fraudulent conveyance claim, but they've got a
20 problem with that, too. The problem that they have with that
21 is there is no fraudulent conveyance cause of action under
22 federal law. We don't have the federal -- body of federal
23 common law that gives them that cause of action. And we have
24 that from the Maritime case in the 4th Circuit, and in the
25 Maritime context we do have federal common laws. I'm sure

1 Your Honor is aware; it's one of the limited areas where we
2 do. And in this Ost-West Handel case, they had a very similar
3 issue on the fraudulent conveyance side, and so they're
4 looking around, they say, well, we don't have admiralty law on
5 this. What do we look at? We look at state law. So in this
6 case, of course, that's going to imply Pennsylvania state law.
7 That's what we've got. So Pennsylvania has a statute, as it
8 turns out. I confess that only one week ago I was unaware of
9 the existence of the Pennsylvania Uniform Fraudulent
10 Conveyance Act. However, I have become a little bit familiar
11 with it. And they've got a problem there as well, because
12 §359 of the Pennsylvania Fraudulent Conveyance Act is in the
13 creditor -- you know, it says that -- and it's captioned,
14 rights of creditors whose claims have matured. That requires
15 claimants to bring a mature claim. They don't have a judgment
16 or anything else. They're not bringing a mature claim. What
17 they're seeking is security for a claim made in an arbitration
18 in London that may become mature if they win the London
19 arbitration. How they shoehorn themselves into the
20 Pennsylvania Uniform Fraudulent Conveyances Act and obtain
21 relief under that is thus far a mystery.

22 THE COURT: Well, is that actually the case? I
23 mean, isn't London just the question of the payments that were
24 due with respect to the charter, but this is about the
25 security for the charter ships. So it's not -- even if you

1 have a resolution in London, it doesn't resolve the issue
2 here.

3 MR. QUARTARO: It doesn't resolve the alter ego
4 issue. That's certainly true, yes. I think the alter ego
5 issue gets resolved, you know, where they allege it and try
6 it, and in this case --

7 THE COURT: But what issue does it resolve?

8 MR. QUARTARO: What issue does the --

9 THE COURT: The London case.

10 MR. QUARTARO: -- London arbitration?

11 THE COURT: Yes.

12 MR. QUARTARO: My understanding is that the London
13 arbitration will resolve whether or not Space is liable to the
14 Plaintiff for the claimed breach of charter damages. My
15 additional understanding is that this is a somewhat
16 complicated case, and it's a complicated case because Space
17 chartered the vessel down to Glencore. Glencore moved the
18 vessel to Venezuela where it's been restrained for some period
19 of time, and my understanding of what's happening in the
20 arbitration is it's a question of which entity is responsible
21 for those damages. If --

22 THE COURT: But I'd love to hear from Plaintiff on
23 this, because it seems to me that if that case is resolved, it
24 only is one little corner of this whole mess, and we're not --
25 mess is a legal term of art. The security, which is what

1 we're talking about here and in Louisiana and in Texas, is a
2 whole separate issue apart from that London arbitration.

3 MR. QUARTARO: Yes.

4 THE COURT: So what happens in London is -- it may
5 have some interest in this litigation, but it's certainly not
6 the key component of this litigation. And this litigation
7 doesn't go away regardless of how London is decided.

8 MR. QUARTARO: I don't think that's correct, Your
9 Honor.

10 THE COURT: Okay.

11 MR. QUARTARO: Because what would happen if the
12 London arbitral tribunal, for example, was to find that Space
13 is not liable but Glencore is?

14 THE COURT: You're right, yes. Right.

15 MR. QUARTARO: So then that's it.

16 THE COURT: But so if there's one way in which it
17 rules, everything may go away.

18 MR. QUARTARO: Well, if --

19 THE COURT: But there are other ways in which it
20 could rule and everything else would remain.

21 MR. QUARTARO: Respectfully, it's a binary decision
22 set. The arbitral panel will determine if Space is liable or
23 not. If the answer to that is not, then this is irrelevant --

24 THE COURT: Right.

25 MR. QUARTARO: -- because obviously there is no

1 liability.

2 THE COURT: But if the answer is it is --

3 MR. QUARTARO: Then maybe this is relevant if they
4 can build this house.

5 THE COURT: Okay.

6 MR. QUARTARO: I think, to put a fine point on it, I
7 think that's the result. There is, of course, a third
8 possible result, and I'm not sure the procedural posture, so I
9 can't represent that Glencore is in the case or, I don't know,
10 maybe Space is arbitrating against them. I'm not quite sure
11 what's happening there. But it may be that the arbitral
12 tribunal winds up finding that Glencore is responsible
13 somehow. So there is a third way in there somehow, Your
14 Honor.

15 THE COURT: Okay.

16 MR. QUARTARO: But it's binary with respect to
17 Space, no -- I think there's no doubt about that. So I think
18 the London -- you know, the London arbitration is certainly
19 very important on that issue. Here, though, with respect to
20 the -- you know, to their theories of liability and the
21 fraudulent conveyance, if they can't place them -- if there is
22 no admiralty law on it and we're looking to state law, they've
23 got to put themselves under the Pennsylvania Uniform
24 Fraudulent Conveyances Act, and our view is that they don't
25 have a mature claim there because there's been no finding of

1 liability. So they can't bring a fraudulent conveyance saying
2 that Space -- and it's not even Space, by the way. They're
3 saying Geden Holdings had other ships and it sold those ships
4 here, that they didn't have a security interest in or anything
5 like that, but that's the sum and substance of their
6 allegation. So it's not a ship owned by Space that was sold,
7 it's ships owned by other companies owned by Geden that were
8 sold. That's pretty important. It's not Space. Space
9 chartered a ship in from their -- from the Plaintiff. And so
10 they -- to even get another -- you know, it is slightly more
11 complicated because it's Space to Geden Holdings to ships
12 formerly owned by Geden Holdings that are sold to Advantage.
13 So it's a little bit convoluted in that respect. But Space is
14 not alleged to be a ship owner that got rid of an asset to
15 Advantage to the disadvantage of Plaintiff, Geden Holdings is.

16 And that brings me to my next point. When we look at
17 this chain of alleged alter egos, Geden Holdings is not there.
18 And unfortunately, Your Honor, Geden Holdings is not there
19 because Geden Holdings is present right here in Philadelphia.
20 They're registered as a foreign corporation to do business in
21 Pennsylvania, and they've appointed CT Corporation as their
22 agent for service of process in this district. So Plaintiff's
23 theory is somehow that Space is liable, and it's alleged, and
24 I believe it is paragraph 27 in their verified complaint,
25 owned by Geden Holdings, but we're not going to name Geden

1 Holdings as a Defendant because that destroys our access to
2 Rule B, which is then owned by Emin Karamehmet and on with the
3 rest of their chain. But they've left out a link. They've
4 left out a link. How did they jump from Space to the owner of
5 Geden Holdings without naming Geden Holdings as a Defendant?
6 And they can't name Geden Holdings as a Defendant, because if
7 they do, they can't give Your Honor a Rule B affidavit that
8 says that none of these alter egos are present here in Your
9 Honor's district. And that's a fairly significant problem
10 with their theory, Your Honor. I would, you know,
11 unfortunately have to suggest, I mean, that's obviously a
12 deliberate choice on their part, not to name that party, the
13 critical central link in their alleged chain of alter egos, in
14 the verified complaint. That's also why you don't see them in
15 the affidavit supporting the Rule B attachment, Your Honor.

16 THE COURT: As I understand it, the relationship is
17 between Space Shipping Limited, and Genel Nakliyatı, not Space
18 Shipping and Geden Holdings.

19 MR. QUARTARO: I would --

20 THE COURT: I mean, that's what the allegations are,
21 right?

22 MR. QUARTARO: It is -- I'm -- respectfully, Your
23 Honor, I'm not sure that that's correct, and I would point
24 Your Honor right back to that memorandum -- that R&R footnote.
25 This is the same thing they did in Texas. They tried to

1 conflate the manager, who's under separate ownership by Mr.
2 Karamehmet, with Geden Holdings. And fortunately for us, the
3 Magistrate Judge realized that they were trying to conflate
4 those two entities, and she even put in a footnote in that
5 R&R, and that's exactly what they're doing in these papers.

6 THE COURT: Well, on -- let's -- setting aside the
7 R&R, is there anything in your submissions that provides
8 evidentiary support for your position that Geden Holdings has
9 to be in the case?

10 MR. QUARTARO: Is there -- yes, I would say -- let's
11 take a look at their verified complaint.

12 THE COURT: Well, no, I asked you whether there's
13 any evidence.

14 MR. QUARTARO: Well, we need --

15 THE COURT: I know what their -- I mean, I can read
16 their verified complaint. We're talking about evidence.

17 MR. QUARTARO: I'm sorry, can Your Honor repeat it,
18 because we've got a lot of evidence in this case, and it's not
19 all in this case. A lot of it's down in Texas.

20 THE COURT: You made the representation that Geden
21 Holdings needed to be in this case because the relationship is
22 between -- is it Mr. --

23 MR. QUARTARO: Karamehmet?

24 THE COURT: Yes, and Geden Holdings. That
25 statement, that the relationship is between Geden Holdings and

1 Karam Mehmet, is there any evidence in your submissions to
2 support that proposition?

3 MR. QUARTARO: I'm not sure that that's something
4 that could be supported on an evidentiary basis, Your Honor,
5 because it's an allegation. So they've made the allegation
6 that Space is owned by Geden Holdings. And on the basis of --
7 I mean, that's all that we have before us is that allegation.
8 But having made that allegation and fail to name Geden
9 Holdings as a Defendant, that's what creates their problem.
10 Now I don't think that there is any dispute as to the fact
11 that -- and this is what they've alleged, that Geden Holdings
12 owns 100% of Space. So I'm not sure that it's a question of
13 evidence that would be before Your Honor so much as a question
14 of what the Plaintiff's theory of the case is.

15 THE COURT: Okay.

16 MR. QUARTARO: And we can see right here, it is
17 paragraph 27, and you can see there is, you know, continuity -
18 - it's their letter H -- continuity of shareholders is the
19 result of the controlling seller corporation Geden Holdings.
20 And that's maybe four or five lines from the bottom of that
21 page 9, Your Honor, which is paragraph 27.

22 THE COURT: Okay, but to go back to the point, your
23 exhibits included a website and you asked the Court to take
24 judicial notice of that website, and also you ask -- you state
25 something in your statement of facts with respect to Geden

1 Holdings.

2 MR. QUARTARO: Oh, I'm sorry, perhaps I
3 misunderstood when Your Honor was asking for evidence. You
4 were asking for evidence of their presence?

5 THE COURT: Correct.

6 MR. QUARTARO: I'm sorry, Your Honor, I completely
7 misunderstood your question. I thought what you were looking
8 for was some evidence of the Geden Holdings ownership of
9 Space, and that's reliant, of course, we're relying for that
10 on their allegations.

11 THE COURT: But, okay, but you've taken the position
12 that Plaintiff intentionally left off a necessary party, Geden
13 Holdings, and you say that Geden Holdings is registered to do
14 business in Pennsylvania and has an agent authorized to accept
15 service in Pennsylvania. And in support of that proposition
16 you attach a website and you ask the Court to take judicial
17 notice of that website.

18 MR. QUARTARO: Yes, Your Honor.

19 THE COURT: There is, however, no evidence either
20 attached or otherwise that mentions anything about a
21 Philadelphia agent authorized to accept service. So that's a
22 statement you just made here today --

23 MR. QUARTARO: Ah.

24 THE COURT: -- but there's nothing in the record to
25 that effect, is that correct?

1 MR. QUARTARO: No, I would say that what it really
2 goes to is the way the Pennsylvania Department of -- I forget
3 if it's state. I believe it's state website lists things, and
4 if you look at the document that we put in, you can see Geden
5 Holdings, then the next business entity name, next is name
6 type, and then after that is address, and that's CT
7 Corporation System here in Philadelphia. And that is their --
8 that is what this page appears to put as the location of their
9 registered agent, whoever that may be. In this case it
10 happens to be CT Corporation --

11 THE COURT: Okay.

12 MR. QUARTARO: -- Philadelphia. I would say that I
13 don't believe that there is any issue of fact as to whether or
14 not they are registered as a foreign corporation licensed to
15 do business in Pennsylvania, or whether or not they've
16 appointed CT corporation as an agent. Plaintiff has made no
17 representation on that fact either. But should Your Honor
18 wish for anything supplemental on that, I'd be very happy to
19 obtain it. I'm sure we'll be able to do that. But this is
20 what the Department of State has provided on the website.
21 It's a little bit different than some other states that, you
22 know, have different informational columns, but there is no
23 doubt that they are registered here and that they have listed
24 a office at CT Corporation as their agent. And so under the
25 two tests present and can be served, as we've cited in the

1 case law, they appear to check that box, Your Honor. And
2 frankly, I don't believe that that's an issue that's in
3 contention. In fact, I believe that it is expressly not in
4 contention, because if it was you would see Geden Holdings as
5 a party, as a named party. And the rest of our contention,
6 Your Honor, summarized I think very accurately. Yes, we think
7 they're deliberately omitted. Incidentally, exactly the same
8 thing in Texas. Geden Holdings has exactly the same thing,
9 registered in Texas as a foreign corporation licensed to do
10 business, and maintained an office and a agent in Texas.
11 However, the Court -- I believe it's the last footnote, if I
12 recall, the Court did not reach that, and fairly so and for
13 good reason. There was a fairly complicated relation back
14 issue that we would have really had to get into if the Court
15 had gone down that path and the Court, you know, ruled in the
16 Advantage Defendants favor on other grounds. But the issue
17 was raised, and it was exactly the same factual circumstance
18 down in Texas as it is here. Present, registered, omitted
19 from the caption, necessary party because they're the central
20 link in the alleged chain of alter egos.

21 And we do cite a case. It is admittedly an SDNY case
22 that finds that where your -- in the Maritime Rule B context
23 where you're naming alter egos, if one of the putative alter
24 egos is present in the district, you're saying they're all the
25 same, therefore they all are. And I would say that that is

1 rather persuasive reasoning because if you're -- if one's
2 arguing that five companies are the same, you can't argue that
3 they're the same for all purposes except for jurisdiction
4 because one of them is present here. They're either the same
5 or they're not. And so I think that's pretty persuasive
6 reasoning.

7 I think that that mostly wraps up what we had in our
8 papers. I think I would ask if Your Honor has any questions
9 about -- any additional questions about anything that we've
10 presented today, I think, I would be happy to answer it.

11 THE COURT: Well, I may come back to you. I have a
12 little bit of a scheduling issue because I didn't fit you in.
13 I have to give a presentation at 12:30, which involves a lunch
14 which I have to be at. So I'm going to be gone from 12:30 to
15 1:30. I don't want to start your argument now and have you
16 have to stop in the middle of it. So let's get back here at
17 1:30 and we'll start off with your argument. Who will be
18 doing the argument on your side?

19 MS. REEVES: Mr. Gaitas.

20 THE COURT: Okay. Mr. Gaitas. Okay. And I am so
21 sorry. I didn't catch your name at the very beginning.

22 MR. QUARTARO: That's okay. It's Quartaro.

23 THE COURT: Quartaro?

24 MR. QUARTARO: Yes.

25 THE COURT: Neil Quartaro. Okay, great.

1 MR. QUARTARO: Thank --

2 THE COURT: I'll see you at 1:30.

3 MR. QUARTARO: Thank you, Your Honor.

4 THE CLERK: All rise.

5 (Recess)

6 THE CLERK: All rise.

7 THE COURT: Good afternoon. Have a seat. Okay,
8 we're starting with Mr. Gaitas, Gaitas?

9 MR. GAITAS: Thank you. Thank you, Your Honor.

10 MR. QUARTARO: One brief moment, Your Honor, just
11 before we start. It was drawn to my attention over lunch that
12 that last exhibit that we had looked at, the printout from --
13 showing the Geden Holdings registration, there was the address
14 of the location that we obtained that from and I think we put
15 that in our statement of facts as well. That is from the
16 official government website. That's not a third party
17 website. And as such, I believe it's probably a self-
18 authenticating document because of that. And the address is
19 located at the bottom and you can see that's a .PA.Gov. And
20 we didn't discuss that, so I just wanted to draw Your Honor's
21 attention to that.

22 THE COURT: Thank you.

23 MR. QUARTARO: Thank you.

24 THE COURT: Okay.

25 MR. GAITAS: May it please the Court, there is a

1 question that I would like to ask regarding the format, it may
2 be a little too late, that the Court wants to follow in this
3 ruling 4(f) hearing. I read the case Salazar v. Atlantic Sun,
4 881 F.2d 73 (Third Circuit, 1989), that states that the format
5 of the hearing is at the discretion of the trial Court. I
6 mention this because Ms. Bacha traveled from Greece to come
7 here just in case the Court wants to hear from the witness who
8 has verified the Complaint.

9 Thus far, we have addressed the issues of law and I can
10 address -- I can speak to those. But if there is an issue of
11 fact that the Court wants to know about, I certainly have
12 Ms. Bacha available.

13 THE COURT: Well, I think the issue is -- I mean,
14 this is a hearing, it's not an argument. You know,
15 Mr. Quartaro has chosen to argue rather than to provide
16 documentary or testamentary evidence. Certainly his decision
17 is not binding on you. If you feel that it behooves you to
18 introduce testamentary evidence, that's up to you.

19 MR. GAITAS: Thank you, Your Honor. If there is any
20 question that comes up during my argument that needs to be
21 illuminated by the witness then I would like to ask the
22 Court's permission to call her.

23 THE COURT: Absolutely. You have my permission, but
24 you should not rely on me asking you a question in making your
25 decision as to whether you should put her on the stand.

1 Because obviously I am asking questions having read these
2 pleadings or really having only had these pleadings for a very
3 short period of time. So if you think that there is any piece
4 of information that would be useful to me by having her
5 testify then you should put her on the stand and have her
6 testify.

7 MR. GAITAS: We will proceed and see if this is
8 necessary --

9 THE COURT: Okay.

10 MR. GAITAS: -- becomes necessary.

11 THE COURT: Okay.

12 MR. GAITAS: Very briefly, the argument of the
13 owners of the Advantage Avenue and the Advantage Defendants is
14 that we have not -- there's an issue of collateral estoppel
15 because of the proceeding that had taken place in Texas and
16 their magistrate's recommendations that are pending that have
17 been objected to. And we're waiting for the decision of the
18 Court -- of the District Court.

19 The argument is a collateral estoppel argument. We have
20 not pled the other arguments. We have not pled the prima
21 facie alter ego veil piercing case nor plead a prima facie
22 successor corporation claim or a fraudulent conveyance claim.
23 And third is that we did not join a necessary party, namely
24 Geden Holdings Limited. This is a summary of their argument.
25 May I address first -- the first argument, and that is the

1 issue of collateral estoppel?

2 THE COURT: Yes.

3 MR. GAITAS: And I think that not much time needs to
4 be taken over this argument for the very simple reason that
5 there has not been a decision by the District Court which is
6 required to review the case based on the objections de novo.
7 So the case that the Defendants have cited in support of the
8 collateral estoppel argument was National Railroad Passenger
9 Corporation v. Pennsylvania Public Utility Commission, 288
10 F.3d 519 at page 525 (Third Circuit, 2002). And it is very
11 clear that the standard for collateral estoppel is that you
12 must have a final judgment on the merits. And we have not had
13 that. That is pending.

14 The same issue is discussed extensively in a District
15 Court decision from the Southern District of New York in
16 D'Amico Dry Limited v. Primera Hellas LTD, 116 F.Supp. 349 at
17 page 357. I don't think that we need to take up the Court's
18 time with arguing about the proceedings in Texas because there
19 is not final decision on the merits.

20 The Third Circuit Court of Appeals, with regard to
21 magistrate's recommendations under 28 U.S.C. Section
22 636(b) (1) (B) in the case of United Steelworkers of America v.
23 New Jersey Zinc Company, at 828 F.2d 1001, notes that it is
24 well settled that the magistrate to whom a motion has been
25 referred under this section of the Act is merely a

1 recommender. Only if the District Court's (indiscern.) of an
2 order can put the proposed recommendation into effect. In
3 conclusion, there is no issue of collateral estoppel here.

4 If I were to move then to the next area of my friend's
5 argument, which discusses the issue of the Plaintiffs having
6 failed to make a alter ego veil piercing case, very simply
7 Plaintiff has not plead alter ego or veil piercing. It has
8 put forward two alternative theories for its claims, the first
9 being successor corporation liability based on the successor's
10 de facto merger with successor, alternatively on the basis of
11 a mere continuation of the predecessors business.

12 THE COURT: Do you think that discovery is required
13 on those issues?

14 MR. GAITAS: That there should be discovery?

15 THE COURT: Yes.

16 MR. GAITAS: If Your Honor wishes to grant
17 discovery, it might be helpful, yes. Further discovery
18 because it was all done in Texas, but these are issues that
19 could be explored. We could use it.

20 THE COURT: Well, let me ask you another question.
21 Is there anything in the record so far which would allow me to
22 evaluate, assuming that in fact you have not plead alter ego
23 veil piercing, that would allow me to evaluate whether there
24 is successor liability, whether there is -- you know, what --
25 predecessors' interests and the existing interests. Is there

1 anything that I can look at in the record that will help me in
2 that analysis?

3 MR. GAITAS: Your Honor, I believe that there is
4 sufficient -- there is -- let me correct myself. There is not
5 in the record, because this is a fact intensive inquiry. So
6 discovery would be helpful, but we feel we have made a prima
7 facie case. How strong it is and if it can withstand any
8 other scrutiny, of course we would like to have more
9 discovery.

10 THE COURT: Okay. Move forward.

11 MR. GAITAS: And we believe, Your Honor, since we
12 are in this area that we have made a prima facie case for
13 successor corporation liability based on the guidance we --
14 and I'm arguing this in the brief in support of this, in the
15 case of Lehman Brothers Holdings Inc. v. Gateway Funding
16 Diversified Mortgage Services, citing at page 5 of our brief.
17 It is from the Eastern District of Pennsylvania and it's a
18 very comprehensive decision as to the basis -- the theory and
19 the basis for allowing these sort of claims. And I don't want
20 to bore the Court with reading again what I have written, I
21 have copied and cited from this decision, but it is
22 essentially that there is a continuation of the enterprise of
23 the seller corporation when you have the same assets, but
24 apart from the same assets, you have the same management
25 personnel, physical location, general business operations.

1 And our argument in this case is that all of these
2 elements, as pled -- we pled them in our Complaint, are
3 present here. You have the same 11 tankers, the crude oil
4 tankers, we make a distinction, because there were product
5 tankers. They have been moved to another scheme by the same
6 -- generally by the same actors, but there is no Advantage
7 tankers there. There is a trust that is operated by we don't
8 know. It's in the Netherlands Antilles, but they're managed
9 under that trust.

10 So there is a -- the issue of the continuant of
11 shareholders that my friend brought up in the analysis of the
12 Court in the Lehman Brother case does not strictly mean that
13 stock has past. It suffices that the seller in quotes
14 "seller" has retained an economic interest in the successor
15 corporation. And that interest in the successor corporation
16 in the instant case is that of the management of the tankers,
17 technical, financial, administrative, that has been retained
18 by Geden Lines. Geden Lines has ship management agreements
19 for each of these tankers worth \$365,000 a year. \$1,000 a day
20 for all 11 tankers.

21 The owner of that entity is Mr. Emil (indiscern.).
22 That's how he's interested in there, plus he's interested in
23 the control of the overall technical, commercial, and every
24 other kind of operation that Geden Lines is doing.

25 This -- another element, and I'm backtracking a bit from

1 the Lehman Brother case is that the seller corporation ceases
2 its ordinary business operations, liquidates, and dissolves.
3 This is essentially what has happened here. Geden Holdings
4 does not own any one ship companies anymore. It has nothing
5 as far as visible assets. We don't know its financial
6 position in Turkey, but that is irrelevant. It is what they
7 have here. Having money in another jurisdiction is not before
8 the Court in a (indiscern.) case, so says (indiscern.), in
9 which this argument was raised, that you have a highly solvent
10 Defendant.

11 And the fourth element in the Lehman Brothers case for
12 making out a successor corporation case is the purchasing
13 corporation assumes the obligations of the seller ordinarily
14 necessary for the uninterrupted continuation of the normal
15 business. And we have pled in our Complaint that this role
16 has been fulfilled through Geden Lines that has assumed all
17 the functions that it used to perform when the holding company
18 was Geden Holdings.

19 I would like to draw attention to a quote at the -- it's
20 cited on page 6 of the Plaintiff's brief from page 255 of the
21 Lehman Brothers decision as to the kind of inquiry that the
22 Court makes when it considers successor liability. And if I
23 just may partially read from that. "Because of the complex
24 nature of corporate reorganizations and acquisitions, the
25 intrinsic nature of a transaction cannot be ascertained merely

1 from the form by which it is structured." The Court must
2 infer not only to all provisions of the agreement, but also to
3 the consequences of the transaction and of the purposes of the
4 provisions of the corporation law said to be applicable.

5 A de facto merger will always be a de facto merger --
6 will always be subject to the fact specific nature of the
7 particular underlying corporate realities and will not always
8 be evident from the formalities of the proximate corporate
9 transaction. So it is an equitable inquiry that calls on the
10 Court to go beyond a formal restructuring of looking at
11 instruments whereby vessels were transferred. The Court needs
12 to go a little deeper than that. And this is where discovery
13 might be very useful.

14 Now, Mr. Quartaro argued that fraudulent transfer issue
15 is governed by state law and it is completely bound to state
16 law and there must be a judgment in bankruptcy. This is not
17 correct. There's very strong law on this very issue in Swift
18 & Co. Packers v. Compania Columbiana del Caribe, 339 U.S. 684
19 at pages 695-696, 1950 decision which sets the standard for a
20 Court sitting in admiralty, protecting its jurisdiction when
21 it is challenged by frustrating and ultimate decision by
22 transferring assets away.

23 And this is precisely what the Court did in the Swift
24 case. There was a vessel. There was a breach of a contract
25 of carriage. And the owners of the vessel had another ship

1 and they transferred it to a brand new company. That ship was
2 seized in the Panama Canal and the lower Courts ruled that
3 this was an issue in equity, and this was a Court of
4 Admiralty, and they didn't have the power to grant the relief.
5 It went to the Supreme Court and it is -- the Supreme Court
6 ruled that it is inherent in the power of a Court of Admiralty
7 in order to protect its jurisdiction to order the remedy --
8 the equitable remedy necessary. And that is setting aside the
9 fraudulent conveyance.

10 The same decision cited in several cases, but most recent
11 I'm aware of is Flame SA v. Freight Bulk Private Limited, 807
12 F.3d 572, 582 (Fourth Circuit, 2015). I will move quickly to
13 the next area of the argument that Plaintiff has not joined a
14 necessary party.

15 And my friend cited in support of this argument a New
16 York case, which is good law, which stands for the proposition
17 that one -- and that case was Glory Wealth, 590 F.Supp. 562 at
18 page 564 (Southern District of New York, 2008), which lends
19 for the simple proposition if an alter ego of a group of
20 companies is present in the jurisdiction and the Court has
21 jurisdiction over that entity, it has jurisdiction over all of
22 the other entities, they are deemed to be present in the
23 jurisdiction. And this is what our opponents argue.

24 There is a subtle difference, though. This is not an
25 alter ego veil piercing case. We haven't uttered the word

1 alter ego or veil piercing in the Complaint or in any of our
2 briefings. But even -- but in the context in which our
3 opponents raised this issue, namely they being strangers as
4 they claim to Geden Holdings, claim to be a separate group, my
5 friend tried to diagram to show the separation of the two.
6 They're far apart. But they're still calling for the joinder
7 of (indiscern.) as a necessary party and raise this argument
8 of -- in the context of alter ego. They're trying, in effect,
9 to pierce their own corporate veil.

10 I'm aware of at least one decision in the context of
11 diversity of citizenship -- on the jurisdictional issue in
12 which a party tried to do precisely that because it was of the
13 citizenship as the Defendant. They said our alter ego is
14 company X, whatever it was, and the Court denied that of them
15 holding that a party may not pierce its own corporate veil to
16 gain a jurisdictional advantage, which is precisely what the
17 Defendants are trying to do. The case is Payphone LLC v.
18 Brooks Fiber Communications, 162 [sic] F.Supp. 175 at page
19 179. That's from the District of Rhode Island. And they cite
20 McCarthy v. Azure, 22 F.3d 351 at 362, 363.

21 Here, to put it another way, Geden Holdings, they argued
22 that Geden Holdings or none of the Geden groups own the vessel
23 that has been attached. They argued that it is Advantage
24 Avenue. But they also argue that Geden should be joined as it
25 is present in the district. They can't have it both ways.

1 Because the only person -- the only party that needs to be
2 joined is one that has an interest in the vessel. So these
3 are the contradictory argument.

4 The grounds for vacatur, vacating an order of maritime
5 attachment and garnishment were very plainly spelled out in
6 the Aqua Stoli case. They were very simple. In order for --
7 in order of attachment to be vacated, the four elements that
8 are required also for making the order must be present. There
9 must be a valid maritime claim. The Defendant must not be
10 found in the district. The Defendant has property in the
11 district and there is no maritime or other law -- statutory
12 law barring that?

13 We submit that all of these four elements are present and
14 we have submitted sufficient evidence to uphold this. The
15 only issue that has been raised by our opponents is the
16 ownership -- ultimate ownership of the Advantage Avenue, and
17 we have addressed this with (indiscern.) who made the prima
18 facie case based on the successor corporation theory. All of
19 the earmarks of a successor corporation are here for making a
20 prima facie case.

21 There is jurisdiction to vacate also on equitable grounds
22 again relying on Aqua Stoli, and these are if the Defendant is
23 in an adjacent district, that he can be served. Or if the
24 Defendant is -- if there is adequate security for the claim,
25 this is not present here. These elements are not present

1 here. The Defendant owns the ship. It's Space Shipping
2 Limited. That's the Defendant. That's the obligor of the
3 Plaintiff. And Space Shipping Limited is not registered
4 anywhere here. Space Shipping Limited cannot be found in any
5 adjacent district.

6 And the vessel, the CV Stealth, is in Venezuela. She's
7 being held by the authorities there for reasons that we don't
8 know and don't understand. She's not being released. Geden
9 isn't -- Geden Holdings or rather Space Shipping, the charter,
10 has (indiscern.) the vessel. They have their own skeleton
11 crew on board. They have it. She's been there, Your Honor,
12 for two years. They have not redelivered her and hire is
13 running daily.

14 The charter has been asked repeatedly to pay, has been
15 invoiced, and has not paid. And this is why we do not have
16 enough security since the last security we obtained, which was
17 with the attachment in Louisiana. The time has gone by and
18 they have not paid the additional hire that has accrued. This
19 is why we're above \$6 million in total unpaid hire.

20 If the Court has any questions from me, I'll be happy to
21 answer them.

22 THE COURT: I -- what I would like to -- I'd like to
23 ask both parties. So here we are in a situation where the
24 ship has been impounded. It's been in Marcus Hook dock for,
25 what, a few days now.

1 MR. GAITAS: Yes.

2 THE COURT: And --

3 MS. REEVES: A week, Your Honor.

4 THE COURT: What?

5 MS. REEVES: A week, Your Honor.

6 THE COURT: A week. When did I -- I thought I
7 issued my order on Friday.

8 MS. REEVES: Right. Yes, a week ago last Friday.

9 THE COURT: Yes, so it was off the coast of Marcus
10 Hook for a few days, but it was not impounded. It may have
11 been here for a few days, but it wasn't impounded until
12 Friday, correct?

13 MR. TEDROSS: That's correct.

14 THE COURT: Okay. So as I understand it generally
15 in this case is what happens is there's an effort to move
16 things along. The Defendant posts a security bond in the
17 Registry of the Court and the boat is then released. Why is
18 that not happening here?

19 MR. GAITAS: Your Honor, we're -- we would be
20 receptive to have security posted, but it is the Defendant
21 that has to post it.

22 THE COURT: I understand that, but -- so why -- this
23 is -- why is that -- rather than having a ship just sitting
24 there and, you know, Defendant paying up and you not really
25 getting what you want, why is the -- why is -- has there been

1 discussions of -- settlement discussions at all?

2 MR. GAITAS: There have been no discussions for
3 settlement. I have not been approached and I -- we have
4 talked before about settlement, but you know, these are
5 without prejudice discussions and I --(indiscern.), the last
6 time I talked was with the Defendants, Advantage Tankers
7 Defendants. Their London solicitor, who is also I understand
8 now in charge of the New York office. This is an English
9 solicitor's firm, Watson Farley. And I met him in Greece last
10 June and we said, okay, let's find a solution, but I was
11 waiting. He was going to get back to me. I haven't heard
12 further.

13 THE COURT: So, Mr. Quartaro, you don't have any --
14 do you have any authority to try and get some kind of security
15 in this case?

16 MR. QUARTARO: It's certainly possible, Your Honor.
17 The -- there is a number of issues. I'd say primarily the
18 large amount that's being sought here is a challenge, as is
19 clear from the record. This particular group of Defendants in
20 the other actions ponied up multiple millions of dollars in
21 security. The instant backs ask is, I believe, the Addendum's
22 3.5, Your Honor. So, you know, playing that forward, they're
23 looking for, I don't know, maybe \$4 million in cash security.
24 That's a lot of money. That is a lot of money, Your Honor,
25 especially --

1 THE COURT: Well, let me tell you my thinking on
2 this is that with respect to the collateral estoppel argument,
3 there is no District Court decision. There's no final
4 judgment on the merits. There's de novo review of the R&R.

5 Looking at the R&R, quite apart from that fundamental
6 issue, it appears to apply only to tank punk and there's an
7 issue in my mind as to whether the substantive law would be
8 different in this case given that that is decided under Fifth
9 Circuit law. And there may be some Third Circuit law here.

10 And certainly looking at the law in the Third Circuit,
11 it's quite clear that an R&R is only a recommendation. I
12 believe, in fact, that a Magistrate Judge has no authority to
13 issue an opinion. It is actually beyond the scope of their
14 authority. So, clearly, there's no collateral estoppel, at
15 least at this point. There -- it may be that once the
16 District Court has ruled that that issue will once again be
17 relevant.

18 So I turn to the other issues and, quite frankly, I was
19 expecting, you know, some -- because it was a hearing rather
20 than an argument, I was expecting some testimony, particularly
21 on the issue of successor liability and the relationship
22 between the parties, but I don't have it. So my view is that
23 you need discovery and we will then have an evidentiary
24 hearing. But that's obviously going to take some time. And
25 we're in the position of we have a ship sitting in Marcus

1 Hook. I am sure that the Coast Guard is not too happy about
2 having a ship sitting there and taking up space. So really
3 the question is, is there a way that you folks can work
4 through something so that everyone's interests can at least be
5 protected for now and the Coast Guard can get what it wants,
6 which is just it doesn't want to have that ship, I assume,
7 sitting in its dock.

8 So that's where I am right now. And I think the question
9 is, is there any way that you good folks can resolve that
10 issue with respect to what are we going to do with a ship.

11 MR. GAITAS: We're very open to any proposals from
12 those who have to put up the security.

13 THE COURT: Any proposal?

14 MR. QUARTARO: No, Your Honor. I don't have
15 authority to offer security at this time. As we did put in
16 our papers, our client is Turkish and as Your Honor may be
17 aware, Turkey, of course, is a Muslim country and has largely
18 been closed for the Eid holiday. And so, approaching their
19 banks and doing those things simply could not have occurred
20 over the last week.

21 In addition, you know, I would have to point out it's a
22 tough economy for ship owners. It has been a long and
23 difficult road since '07 or '08 for many of them and we are
24 talking, as my opponent has identified, we are talking about
25 claims by this Plaintiff and a couple of others against Geden

1 companies that are being secured by assets from a completely
2 different group of companies. And that, in and of itself, of
3 course, creates problems. How you -- you know, how do you --
4 you've got to get that past your own board of directors.
5 That's not an easy thing to get over the line.

6 So, unfortunately, I don't have instructions on that
7 right now, Your Honor. And with respect to the nature of the
8 hearing here before Your Honor today, I think, you know, our
9 view on the discovery is that this is exactly -- this is
10 precisely the argument that was made down in Texas. We did
11 it. We went through all of that discovery and Your Honor has
12 the R&R and you can see what the result of that was.

13 THE COURT: But -- right. So that was in Texas.

14 MR. QUARTARA: Yes.

15 THE COURT: So and this is here. So I assume that
16 given the fact that the discovery was already heard in Texas,
17 that the discovery in this case will be easier because you
18 already know what each other has. There may be some
19 additional information that you need. But the question that I
20 have before -- because really the ship is your headache, not
21 my headache. You know, what -- and Marcus Hook is your
22 headache, not my headache. It may become my headache at some
23 point, but right now it isn't. So the question is how long do
24 you think it would be necessary to get the discovery on the
25 successor liability issue and whether the -- that such control

1 was used to commit a fraud or wrongdoing in this matter.

2 MR. GAITAS: Your Honor, with previous experience --
3 (indiscern.) previous experience, scheduling is difficult
4 between the parties but I should think if we give ourselves a
5 few months from today, I think that should --

6 THE COURT: How many months? Three months?

7 MR. GAITAS: Three months from today. That should
8 be adequate.

9 MR. QUARTARO: Your Honor, I would just ask as a
10 point of clarification from Plaintiff's counsel, what
11 discovery in addition to the discovery that he's already
12 obtained would he be looking for? The owner of the Advantage
13 group has been deposed. The CEO has been deposed. The CFO
14 has been deposed. We've taken his documentary requests. He's
15 had responses to all of those. No objections were raised in
16 the Texas proceedings. I mean, if we're going to go three
17 months, okay, but what are we going to be doing during those
18 three months if -- as Your Honor accurately points out, that
19 underlying discovery has already occurred. That's already
20 there.

21 THE COURT: Okay. Mr. Gaitas, what's your response
22 to that?

23 MR. GAITAS: I would -- with respect, I would ask my
24 friend not to ask me to tip my hand as to what I'm planning to
25 ask for because I would be revealing it. I want to consult

1 with my clients. I want to go back to my files and see what I
2 need. I need quite a lot more. And it would involve parties
3 other than the Advantage group Defendants. It would involve
4 Geden Defendants.

5 THE COURT: Well, you're going to have to --
6 although there's been discovery in that other matter in Texas,
7 you're going to have to have some negotiations as to whether
8 that discovery can be used in this case. So that is -- that's
9 not discovery, per se, but it requires negotiations of some
10 sort and I don't know -- it could be easy negotiations. It
11 could be difficult negotiations. I don't know. I think
12 probably 90 days is excessive. I mean, I think we're limited
13 to 60 days. And then you need some briefing following that.
14 So I'll give you -- and I'll calculate all of the deadlines
15 and provide an order. How many -- how long after the close of
16 discovery would you need in order to file a brief?

17 MR. GAITAS: I should think about 30 days, at least.

18 THE COURT: 30 days?

19 MR. GAITAS: Taking into account our other case
20 loads and things, you know --

21 THE COURT: So you -- but the --

22 MR. GAITAS: Yes.

23 THE COURT: It would be -- the Defendant would be
24 filing the moving brief, right? You would be filing the
25 moving brief?

1 MR. QUARTARO: Well, I -- that's an excellent
2 question, Your Honor. Good question. I'm not sure leaving
3 from here exactly what the procedural posture would be. I
4 mean, it's Plaintiff's case, obviously. We're now going to
5 discovery. I mean, is this functionally motion for summary
6 judgment? I'm not clear on what the procedural posture would
7 be.

8 THE COURT: Well, my concern is whether I have
9 jurisdiction. I don't know whether I have jurisdiction and I
10 don't have enough information to tell whether I have
11 jurisdiction. So I suppose it would be a jurisdictional brief
12 and discovery would be fundamentally jurisdictional discovery.
13 The question is how far does that go and sitting here today,
14 as you suggested, Mr. Quartaro, the discovery issue -- the
15 jurisdictional issue is so -- it's sort of a Gordian knot in
16 this case. And so I think it's up to you to determine whether
17 -- how extensive the discovery should be and I assume you're
18 going to have some back and forth on that.

19 But given that it will essentially be a lack of
20 jurisdiction motion, I think it would be on you to file and on
21 you to respond. Unless you think otherwise. I mean, I'm open
22 to suggestions here.

23 MR. GAITAS: Your Honor, a small distinction. The
24 Court's jurisdiction is based on the allegations of the
25 Complaint in the presence (indiscern.) in the district. And

1 it's the ownership that, I think, gives trouble to Court as to
2 who moves this ultimately.

3 THE COURT: Right.

4 MR. GAITAS: And this is -- that's what the
5 discovery should be aimed at. It's not on jurisdictional
6 issues as to who is subject --

7 THE COURT: Well, but that does go to the
8 jurisdiction because if the ownership -- if Geden, in fact,
9 owns the ship, then the prima facie element, number one, would
10 not be met.

11 MR. QUARTARO: I'm sorry, Your Honor. I didn't
12 quite catch that.

13 THE COURT: I know you didn't and I'm just --

14 MR. GAITAS: If Geden Holdings, I think, you mean
15 owns the ship. Geden Holdings itself owns the ship.

16 THE COURT: Okay. So the issue does Plaintiff have
17 a valid prima facie admiralty claim against the Defendant, the
18 Defendant cannot be found within the district. And if you
19 are, in fact, right that the Defendant is within the district
20 then the elements under 4(f) have not been met. And so that's
21 one of the issues. And that issue is tied up with ownership.

22 MR. GAITAS: But Geden Holdings, itself, we have not
23 pled them as an owner of the assets. It's Space Shipping and
24 Space Shipping is not present in the district. I don't think
25 any discovery will yield a contrary result.

1 THE COURT: Well, so what's your point about -- give
2 me your point about the entity that's in this district.

3 MR. QUARTARO: The Plaintiffs have alleged a chain
4 of alter egos which flows from Plaintiff's contractual
5 relationship with Space. Space is owned by Geden Holdings, as
6 the Plaintiffs have alleged, that's their work chart. That's
7 their allegation. So our on chart Space owned by Geden
8 Holdings. It might be helpful if I just point at it. And so
9 our problem here is that they're alleging this chain of alter
10 egos. They're saying --

11 THE COURT: They're not saying -- but he said he's
12 not alleging alter egos.

13 MR. QUARTARO: But -- well, I --

14 THE COURT: But that's argument, but that's not what
15 he says in his Complaint.

16 MR. QUARTARO: Okay. Well, I appreciate what Your
17 Honor is saying, but in that case and if we look at the
18 Complaint, how do they connect these two houses, and they have
19 to get to the owners.

20 THE COURT: But isn't that the issue that I can't
21 decide that issue right now. So you need discovery on that
22 issue and you need to tell me about that issue with
23 evidentiary support.

24 MR. QUARTARO: I -- yes.

25 THE COURT: Otherwise, I can't rule on this issue.

1 MR. QUARTARO: Yes, Your Honor. I understand --
2 what I'm taking from this from Your Honor, but please correct
3 me if I'm getting this wrong. What I'm understanding from
4 Your Honor is you want to see certainly the discovery,
5 assuming we can agree on it. Let's just call it the
6 discovery. The results of the discovery, all right, on these
7 relationships because this is what our opponents are saying
8 creates liability here.

9 THE COURT: Correct.

10 MR. QUARTARO: This is why they say we have a claim
11 against Space, but I can get Advantage Avenue --

12 THE COURT: Absent that discovery, all I know is
13 that you're saying X and you're saying Y, but there's nothing
14 that allows me to decide who is right. And I'm not going to
15 just pick a side out of the -- out of thin air --

16 MR. QUARTARO: Sure, sure.

17 THE COURT: -- and make a decision. I need some
18 facts. So the discovery should be focused on that issue.

19 MR. QUARTARO: But, Your Honor, I would just say the
20 order -- that that discovery has been heard. That's exactly
21 what the order says.

22 THE COURT: I got it.

23 MR. QUARTARO: And so let's just use that. We've
24 got the depositions --

25 THE COURT: But he just told me that, you know, we

1 already established you've got some negotiating to do as to
2 whether that discovery can be used here. And he said that he
3 has additional discovery to do. So you are going to have to
4 have some pretty significant discussion about what that
5 discovery is. And in this Court, there are local rules and I
6 also have some rules with respect to the kind of discussions
7 you have to have. They have to be very full, very thorough.
8 If you have any disputes, you're going to give me -- send me a
9 letter and we'll talk about it. But you will only send me a
10 letter if you've already had very significant discussions.
11 And if the disputes spiral into just a whole series of
12 letters, he said/she said or he said/he said, what I'm going
13 to do is just bring you in and put you in this Courtroom
14 together for however long it takes in order to resolve them.

15 So, you know, I can't be the babysitter. Okay?

16 MR. QUARTARO: Your Honor, we understand that.
17 Mr. Gaitas and myself, this is not our first case across from
18 each other.

19 THE COURT: I assumed that. I assumed that.

20 MR. QUARTARO: And I think -- I would say this, and
21 I know he would agree, whatever the merits of this battle are,
22 they are. That has certainly never intruded on my
23 relationship with opposing counsel. Certainly in the Texas
24 case, we've been able to work together. In other cases, we've
25 been able to work together. I, of course, have been in and

1 have witnessed many side disputes, we can call them, were that
2 to occur here, it would be the first in a fairly long history
3 of cases I've had against the Chalos firm. So --

4 THE COURT: Good. Well, that's good to know.

5 MR. QUARTARO: -- I would believe that we could
6 probably work that out. What I'm concerned about, of course,
7 is repeating exactly what we've already done. That is a
8 concern. We've already done the deposition of Mr. Kahoost
9 (phonetic), for example, and maybe we figure this out and
10 maybe this is something that has to be brought forward, but
11 are we going to go and ask him the same questions that we've
12 already asked in Texas? I mean, what are --

13 MR. GAITAS: Of course not. That's ridiculous. We
14 would never do something like this.

15 THE COURT: Okay, so it seems to me that there's no
16 reason, except for the purpose of being obstructive, and I am
17 taking it on faith that you are not going to be obstructive,
18 to repeat exactly the same discovery that has occurred
19 already. In my view, the only discussion that has to be had
20 is how much of that discovery can be used in this case. And
21 if the negotiations occur and there's a decision that, in
22 fact, all of it can be used in this case, then the question is
23 what else is needed. And I assume, again, that Mr. Gaitas is
24 going to come up with whatever he needs and then you're going
25 to have a discussion with him about whether you think it's

1 duplicative or not.

2 MR. QUARTARO: I think we can take it from there and
3 if there is an issue, we'll bring it to Your Honor's attention
4 exactly the way you have instructed us to do.

5 THE COURT: Okay. So you're going to have 60 days
6 of discovery, 30 days for a brief, 10 days for a response, 5
7 days for a reply, and then we will set up an evidentiary
8 hearing giving me sufficient time to really analyze the briefs
9 and the evidentiary submissions at some point thereafter. And
10 my deputy will be in touch with you to determine when it works
11 for you.

12 In the meantime, I -- quite frankly, I don't know what
13 the Coast Guard usually does in these cases. I'm assuming
14 that you do.

15 MS. REEVES: No, I certainly don't, Your Honor.

16 THE COURT: You stood up. I thought you were going
17 to tell me exactly what they're going to do.

18 MS. REEVES: No, Your Honor, I don't, but Mr. Ennis
19 -- he is here.

20 MR. ENNIS: Good afternoon, Your Honor.

21 THE COURT: Is that -- are you the Coast Guard?

22 MR. ENNIS: No, I'm with the United States Marshal
23 Service. We're the ones who have the vessel under arrest.

24 THE COURT: Okay.

25 MR. ENNIS: The Coast Guard has been contacting our

1 office on a daily basis. Currently, the ship is anchored at
2 Marcus Hook Anchorage, which in effect means it's sitting at
3 anchorage in the middle of the Delaware River at Marcus Hook.
4 The Coast Guard is claiming it's interfering with navigation
5 on the river. Marcus Hook Anchorage is a very busy anchorage
6 and it's interfering with that anchorage. They would like to
7 have it moved. The issue is moving it somewhere in the orders
8 of Eastern Pennsylvania, there's really no anchorages that are
9 in the Eastern District of Pennsylvania. Nobody really knows
10 what the boundaries are in the river. They've never really
11 firmly been established of what constitutes New Jersey and
12 Pennsylvania.

13 They would like it moved to one of two different
14 anchorages. One is Kaighn's Point, which is -- when you
15 Google it, Camden actually runs Kaighn's Point Anchorage. And
16 the other is Ready Point, which is all the way down in
17 Wilmington. So that would clearly be Delaware.

18 Now, what they're telling me is they've had meetings
19 today, this morning, and they want to issue a captain of the
20 port order to the ship and to the agent of the ship to move
21 that ship because it's interfering with the navigation of the
22 river. So I expressed those concerns to the Plaintiff. And
23 right now, there's really kind of odds of where we're going to
24 put this ship --

25 THE COURT: Okay.

1 MR. ENNIS: -- while it's sitting because they do
2 not want it in the middle of the river months on end.

3 THE COURT: And I can understand that. So what's
4 the response?

5 MS. REEVES: I have a -- I think I have a solution.
6 I believe from my research that this Court has jurisdiction
7 all the way to the New Jersey side of the river and the
8 District of New Jersey comes here, but it's not crystal clear.
9 I think -- on the other hand, I don't think that the vessel
10 should go out of your jurisdiction into Delaware. So I had
11 spoken briefly to Mr. Whelan, who I'm not sure spoke to his
12 co-counsel. I think if we can agree that there's no objection
13 to having her go to the anchorage that is near Camden and Your
14 Honor would order that, and we both agree that it's still
15 within the jurisdiction, that would satisfy the Coast Guard
16 and get the Coast Guard off the Marshal's back. Because the
17 Marshal is actually the custodian right now of the vessel.

18 THE COURT: So it sounds, theoretically, like a good
19 way to go. The problem is that -- these jurisdictional
20 niceties, if in fact that New Jersey port is not within this
21 Court's jurisdiction, then suddenly we have a ship that is
22 outside of my jurisdiction. So the question there is -- a
23 legal question is, how far does the jurisdiction go. And you
24 said maybe it goes all the way to the edge of the river.

25 MS. REEVES: Your Honor, I have a case from quite a

1 while ago from New Jersey about some kind of car accident or
2 crime that occurred on a bridge between New Jersey and
3 Philadelphia. And that Court said, I have it hear, said -- it
4 was a New Jersey State Court, but that Court said that there's
5 a compact that predates the Constitution between New Jersey
6 and Pennsylvania that says at least for law enforcement
7 purposes, that each state, Pennsylvania and New Jersey, has
8 concurrent jurisdiction over the Delaware River. That's as
9 close as we could find. I know Mr. Ennis has had this --

10 THE COURT: So what -- so does that mean the
11 Delaware River, as long as you're not touching the port of the
12 other side or --

13 MS. REEVES: I think as long as you're not above
14 the --

15 THE COURT: -- when does the waters lapping stop.

16 MS. REEVES: -- high or the low water line where the
17 tide goes up and down. That's what that case says. There is
18 no case that says the Eastern District of Pennsylvania's
19 jurisdiction ends here. But I think if we all agree, I don't
20 think there's anyone to --

21 THE COURT: It doesn't matter if you agree. If I
22 don't have jurisdiction, I don't have jurisdiction.

23 MS. REEVES: Okay.

24 THE COURT: You can agree on anything, I still don't
25 have jurisdiction.

1 So the second way of possibly thinking about it -- is
2 that what you were going to say?

3 MR. WHELAN: Your Honor, my only point was -- first
4 of all, just so everyone's clear, is I've heard Your Honor say
5 a dock. This ship is never -- when it has been under
6 attachment, it's always been at an anchorage.

7 THE COURT: At an anchor, okay.

8 MR. ENNIS: It's always been in water.

9 MR. WHELAN: Right, it's always been at an anchor.

10 THE COURT: So if it were to go to the New Jersey
11 side, it would not be in a dock, it would be at an anchor?

12 MR. ENNIS: It's actually not a -- it's not docked
13 in New Jersey. It's actually in the Delaware River. But for
14 some reason when you Google the Kaighn's Point Anchorage, it
15 comes up as -- I guess they have offices in Camden is probably
16 what's happening. I've been doing this for many, many years.
17 This is dozens of ships we've had, and this is always an
18 issue. And nobody can clearly -- even the Coast Guard can't
19 clearly say where the state boundary is in the river. Some
20 say it's in the center of the river. Some say it's to the
21 water line. Delaware -- I know Delaware claims that all the
22 way to the water line on the New Jersey bank, but New Jersey
23 always pushes back on Delaware and saying no, it's in the
24 center of the river.

25 So nobody really knows. But the ship isn't docked at a

1 dock. It's not docked --

2 THE COURT: Okay.

3 MR. ENNIS: -- on a dock on the New Jersey coast.
4 It's in the river.

5 THE COURT: Okay, so --

6 MR. ENNIS: It's on the water.

7 THE COURT: So the next question, one possible way
8 of looking at it is that given that I had jurisdiction at a
9 time the ship was impounded, does agreeing to allow the ship
10 to be -- and the order does allow the ship to be moved around.
11 But does allowing it to be moved around to the opposite side
12 of the Delaware deprive me of jurisdiction?

13 MS. REEVES: Your Honor, I saw a case getting ready
14 for this and I'll have to find it, that says even if the
15 (indiscern.) leaves the jurisdiction, the Court still has
16 jurisdiction over the case, but maybe not the ship. But I
17 don't think so. I think you would still have jurisdiction,
18 Your Honor.

19 THE COURT: Well, I think you have to -- I think
20 this is something that you have to look at because -- and you
21 have to do it pretty quickly because there -- this could
22 actually create a danger in the waterway.

23 MR. ENNIS: Correct, Your Honor. That's the Coast
24 Guard's position.

25 THE COURT: So I think given that you're interested

1 in maintaining jurisdiction here, because you don't want to
2 have to start this whole thing again in New Jersey, I think it
3 behooves you to look at those jurisdictional issues and to
4 perhaps talk to the other side, figure it out, and you must
5 satisfy the Court that I would have jurisdiction if you were
6 to move it to the other side of the river. And if both of you
7 agree that, in fact, I would and I read the case law and I
8 determine that I do, then I'm happy to sign an order allowing
9 it to be moved to the other side of the river.

10 MS. REEVES: Your Honor, if I might, I do -- not
11 that anyone's going to decide, I realize, in a second. But I
12 do -- I did bring the case law that says that in the river
13 itself, that the police powers, you know, the marina police,
14 for example, you know -- the Philadelphia marina police can
15 enforce drug boating laws or whatever on the Jersey side of
16 the river and vice versa. I'm happy to share that with
17 opposing counsel and the Court. I honestly was quite
18 exhaustively looked at this --

19 THE COURT: But that's just about police powers,
20 which is not jurisdictional. It's not a jurisdictional issue.

21 MS. REEVES: There is no -- I can represent to the
22 Court to the best of my ability, I spent quite some time on
23 it, that I can't find anything on that.

24 THE COURT: And you found nothing on if I -- the
25 (indiscern.) is in my jurisdiction when it's impounded, it's

1 okay to move it.

2 MS. REEVES: No, I haven't found anything that talks
3 about the outer limits of your --

4 MR. WHELAN: It's okay to move it within the
5 jurisdiction.

6 THE COURT: We all know that.

7 MR. WHELAN: It's just -- Your Honor, we do have --
8 I do have some case law back in the office. I don't have it
9 with me now on this issue.

10 THE COURT: Okay.

11 MR. WHELAN: So I -- we could try to get together
12 and talk about it.

13 THE COURT: Yes. Why don't you try and get together
14 and figure it out because I think, you know, now that we've
15 taken the pressure out of getting my issue decided because
16 we've got the discovery and the briefing schedule. Really the
17 issue now is what to do with the ship. And I think there's a
18 number of elements to that. One is what to do with -- can we
19 move it. And then the second issue is when is the Turkish
20 holiday over?

21 MR. QUARTARO: I believe that it end this week, Your
22 Honor.

23 THE COURT: So how long is this holiday?

24 MR. QUARTARO: I am not a member of that faith, nor
25 am I Turkish, but I believe it is approximately a week, Your

1 Honor.

2 THE COURT: What is it? It's Ramadan?

3 MR. QUARTARO: Eid, I believe.

4 THE COURT: Eid. Does anyone know how long Eid
5 lasts for?

6 UNIDENTIFIED SPEAKER: I believe it's a week. I
7 believe it may be sundown our Sunday and Saturday, but I'm not
8 absolutely positive.

9 THE COURT: Okay.

10 UNIDENTIFIED SPEAKER: But I think it's a week long
11 holiday.

12 MR. QUARTARO: I believe that's correct. I would
13 say, of course, going back and forth with the client over the
14 last week, there were a couple of things that they just could
15 not manage, one of which -- today, for example, is the first
16 time somebody could get into an office and get stuff copied
17 and scanned.

18 THE COURT: Okay.

19 MR. QUARTARO: So I'm thinking we're through the
20 week.

21 THE COURT: Okay. So I think there's -- there's two
22 aspects. One is the ship and one is -- or where are we going
23 to move this thing, which I think is a -- we've got to figure
24 that out in the next 24 hours, otherwise the Coast Guard may
25 storm the federal building. And then the second issue is

1 whether we can take the heat out of this by posting a security
2 bond in the Registry of the Court. And I think that's
3 something that only you can work on. And obviously, if that
4 is not going to happen after you spoke to your clients, then
5 you've got to have a conversation with opposing counsel to --
6 so that you can put that idea to rest. But I hope that that
7 can somehow be resolved.

8 MR. GAITAS: It shouldn't be a difficulty -- major
9 difficulty, Your Honor, for the other side to provide
10 security. I noticed Mr. Quartaro said this his client is
11 Turkish. His client isn't Turkish. His client is Marshal
12 Islands and Marshal Islands come -- I don't know who the
13 Turkish people are that control the money. That raises a real
14 issue here. So Eid and these holidays should not interfere.

15 THE COURT: Well --

16 MR. GAITAS: Unless all the banks are in Turkey.

17 THE COURT: Maybe, but that's what he's saying and I
18 don't have any reason to doubt him. You know, things are
19 registering in all sorts of places all over the world. It
20 doesn't mean that --

21 MR. GAITAS: Indeed, they are.

22 THE COURT: -- you know, the people who make the
23 decisions are in those particular places. Okay. Anything
24 else?

25 MR. WHELAN: Two items on our side, Your Honor.

1 THE COURT: Okay.

2 MR. WHELAN: The first is we are, of course,
3 expecting at any time action from the Court in Texas. So I
4 would respectfully request, Your Honor, that if that occurs
5 during this period, that we have the Court's permission to
6 draw your attention to whatever that order is.

7 THE COURT: You can draw my attention to anything
8 you'd like.

9 MR. WHELAN: Thank you, Your Honor. I appreciate
10 that. The other thing is since we are going to head down the
11 discovery road, it may then make sense, we have provided our
12 statement of material fact and the exhibits. And so it
13 probably then makes sense to move those into evidence now.
14 That way Your Honor has something. We'll add to it with
15 whatever we're going to add to it, but at least --

16 THE COURT: Let's wait until the evidentiary
17 hearing, because I would prefer to have everything together
18 rather than having bits and pieces now and then bits and
19 pieces later on.

20 MR. WHELAN: Okay, thank you, Your Honor.

21 MS. REEVES: Your Honor, if I may. In terms of the
22 next 24 hours, it is Friday afternoon, do you want us to
23 contact you through the clerk or something over the weekend
24 about moving the vessel potentially?

25 THE COURT: Well, the U.S. Marshal has -- you have

1 my cell phone, right? I'm sure someone --

2 MR. ENNIS: Someone in my office does.

3 THE COURT: Someone has it. So if you really --

4 MS. REEVES: And I have his number.

5 THE COURT: Right. So if you need me, you know,
6 I'll be -- I'm 15 minutes away from the Courthouse. I'm also
7 available by telephone. The U.S. Marshal will contact me, not
8 you. And, you know, we'll -- you don't have to report to me
9 if the issue is resolved and every -- well, wait a minute.
10 No, you do have to report to me because it's a jurisdictional
11 issue, yes.

12 MS. REEVES: Unless we can find a birth on this side
13 of the river, but I don't know how we do that will be --

14 THE COURT: Okay. What you will do is if you have
15 determined the jurisdictional issue and you have a filing with
16 respect to the jurisdictional issue, you're going to e-mail it
17 to my federal Judge account rather than to the chambers
18 account. And, Michael, do you know what my -- yes, he's going
19 to give you my -- it's not my personal e-mail, but my federal
20 Judge e-mail. So I have my iPhone on me at all times and
21 we'll be able to read it if you file something. If there is a
22 need for a phone call or something other than just filing the
23 document, then go through the Marshal and we'll set something
24 up. Because if we need a hearing, I need the Marshal to open
25 up -- I need someone in the Courthouse, right?

1 MR. ENNIS: The CSO's are at the Courthouse 24/7.
2 They're always here.

3 THE COURT: Even on the weekends?

4 MR. ENNIS: Even on the weekends, they're here.

5 THE COURT: Okay. Okay. So I think that way I can
6 get any information I need and if you need anything more than
7 just something to file, or if you need me to sign an order,
8 you can -- essentially, if you need more than just filing
9 something, you can go to the U.S. Marshal and he'll get in
10 touch with me.

11 MS. REEVES: Sorry to bother you about this, Your
12 Honor.

13 THE COURT: That's okay. Anything else?

14 UNIDENTIFIED SPEAKER: Your Honor, just so I'm clear
15 on the procedure here. If we -- if there is an agreement,
16 file that agreement in the form of a consent order for Your
17 Honor's approval, send it to your e-mail first or file it, or
18 both?

19 THE COURT: File it and send it to the e-mail.

20 UNIDENTIFIED SPEAKER: That we're going to receive
21 in a moment?

22 THE COURT: Right.

23 UNIDENTIFIED SPEAKER: Okay.

24 THE COURT: And I will not be able to sign it when
25 there's no -- the Clerk's Office is not open. I'm not going

1 to be able to actually physically sign it. But what I can do
2 is I will respond to all of you and say this is acceptable and
3 it will be signed on Monday. But because it's a
4 jurisdictional thing, you have to include some kind of -- it
5 can't just be (indiscern.) jurisdiction. There has to be some
6 analysis as to why you all believe that I have jurisdiction.
7 So I think that if I have jurisdiction, if I move it -- if you
8 move it across the Delaware. So that seems to me to be a --
9 not -- it's not a point/counterpoint issue, either you all
10 agree that I would have jurisdiction if it was moved or you
11 all -- or one of you does not agree. So if all of you agree
12 that I have jurisdiction if the boat is moved, then you're
13 going to just provide me with an analysis of your conclusion
14 and that will allow me to sign off on the order.

15 MS. REEVES: Understood, Your Honor.

16 THE COURT: Okay? Anything else?

17 MR. GAITAS: Not from the Plaintiff.

18 MR. QUARTARO: Not from the Advantage Defendants,
19 Your Honor.

20 THE COURT: Okay. Anything from the U.S. Marshal?

21 MR. ENNIS: No, Your Honor.

22 THE COURT: Okay. Thank you very much.

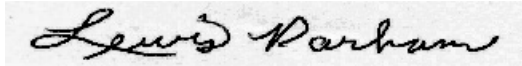
23 THE CLERK: All rise.

24 (Court adjourned)

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Lewis Parham", is written on a light-colored rectangular background.

10/5/16

Signature of Transcriber

Date